REPORTABLE (8)

(A)

(1) WILLIAS MADZIMURE (2) SAMUEL SIPEPA NKOMO (3) LUCIA MATIBENGA (4) EVELYN MASAITI (5) PAUL MADZORE (6) REGGIE MOYO (7) SOLOMON MADZORE (8) BEKITHEMBA NYATHI (9) MOSES MANYENGAVANA (10) ALBERT MHLANGA (11) ROSELENE NKOMO (12) SETTLEMENT CHIKWINYA (13) JUDITH MUZHAVAZHI (14) GORDEN MOYO (15) GLADYS MATHE (16) TENDAI BITI (17) MOVEMENT FOR DEMOCRATIC CHANGE

v

(1) THE PRESIDENT OF THE SENATE (2) THE SPEAKER OF THE NATIONAL ASSEMBLY (3) THE PRESIDENT OF ZIMBABWE (4) CHAIRPERSON, ZIMBABWE ELECTORAL COMMISSION (5) THE ZIMBABWE ELECTORAL COMMISSION

(B)

(1) SEKAI HOLLAND (2) RORANA MUCHIHWA (3) WATCHY SIBANDA (4) PATRICK CHITAKA (5) MOVEMENT FOR DEMOCRATIC CHANGE

v

(1) THE PRESIDENT OF THE SENATE (2) THE SPEAKER OF THE NATIONAL ASSEMBLY (3) THE PRESIDENT OF ZIMBABWE (4) CHAIRPERSON, ZIMBABWE ELECTORAL COMMISSION (5) THE ZIMBABWE ELECTORAL COMMISSION

CONSTITUTIONAL COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA DCJ, ZIYAMBI JCC,
GWAUNZA JCC, GARWE JCC, GOWORA JCC,
HLATSHWAYO JCC, PATEL JCC & GUVAVA JCC
HARARE APRIL 14, 2015

L Madhuku, with him *L Uriri*, for the applicants

S J C Chihambakwe, with *A Demo*, for the first and second respondents in applications CCZ 19/15 and CCZ 20/15

P Machaya, for the third respondent

T Kanengoni, for the fourth and fifth respondents

MALABA DCJ: After hearing submissions by counsel in the two applications, the Court made the following order:

> "After considering the papers filed in this matter and hearing submissions by counsel, the Court unanimously concludes that both applications have no merit and are hereby dismissed with costs on the ordinary scale."

The following are the reasons for the order.

Two constitutional applications, No. CCZ 19/15 and No. CCZ 20/15, were filed with the Registrar of the Constitutional Court ("the Court") on different dates. Each application sought an order setting aside the announcement by the Speaker of the National Assembly ("the Speaker") and the President of the Senate that the applicants' seats in Parliament had become vacant because the applicants had ceased to belong to the political party of which they were Members when elected to Parliament. The applicants in case CCZ 19/15 were Members of the National Assembly, whilst those in case CCZ 20/15 were Members of the Senate. They had all been elected to the two Houses of Parliament as members of the Movement for Democratic Change-Tsvangirai ("MDC-T") political party. The Court heard the two applications together, as they raised the same issue and sought the same relief.

The applications were made in terms of s 85(1)(a) of the Constitution of Zimbabwe Amendment (No. 20) 2013 ("the Constitution"). The section provides that any person who alleges that any of the fundamental rights and freedoms enshrined in *Chapter 4* of the Constitution has been, is being or is likely to be, infringed may, in his or her own interests, approach a court seeking appropriate relief, which the court has a discretion to grant.

The historical background to the cases is that the applicants in both cases are former members of the MDC-T. The applicants in the first application were elected to the National Assembly while the applicants in the second application were elected to the Senate, in the harmonised general elections held on 31 July 2013. As a result of political infighting, the applicants withdrew their memberships from the MDC-T. The Secretary General of the MDC-T wrote letters to the Speaker and the President of the Senate, giving them notice of the fact that the applicants had ceased to belong to the MDC-T.

Upon receipt of the written notices, the Speaker and the President of the Senate announced to the Members of their respective Houses that the seats occupied by the applicants had become vacant. The announcements were made by the Speaker and the President of the Senate in their capacities as the presiding officers of the respective Houses of Parliament. They also informed the third and fourth respondents of the occurrence of the vacancies, as they were required to do by s 39(1) and s 39(3) of the Electoral Act [*Chapter 2:13*] ("the Electoral Act").

In the wake of the written notices declaring that they had ceased to belong to the MDC-T, the applicants did not approach any court for an order protecting their rights. They decided to follow the advice of Mr Tendai Biti, a legal practitioner and one of those who had withdrawn his membership from the MDC-T. He advised that they should make applications to the Court,

challenging the validity of the announcements by the Speaker and the President of the Senate that their seats had become vacant.

The applicants failed to appreciate the nature and scope of the juristic acts, the occurrence of which is required under s 129(1)(k) of the Constitution for a vacancy in a seat of a Member of Parliament to occur. They approached the Court, alleging that the Speaker and the President of the Senate had expelled them from Parliament by the announcements to the Members of the respective Houses that their seats had become vacant.

The applicants alleged that the conduct of the Speaker and the President of the Senate in "expelling" them from Parliament infringed their fundamental right to equal protection and benefit of the law enshrined in s 56(1) of the Constitution. They also alleged a violation of the right to form, join and participate in the activities of a political party of their choice in terms of s 67(2)(a); the right to stand for election for public office and, if elected, to hold such office in terms of s 67(3)(b); the right to administrative justice in terms of s 68; and the right to a fair hearing in terms of s 69(3), of the Constitution.

The respondents opposed the applications. They argued that the conduct of the Speaker and the President of the Senate in announcing that the seats occupied by the applicants in the respective Houses had become vacant was lawful. It could not have infringed the applicants' rights. The respondents' contention was that the seats became vacant as a result of the operation of the provisions of s 129(1), as read with s 129(1)(k), of the Constitution. The announcements by the Speaker and the President of the Senate of the existence of the vacancies in the seats in Parliament which had been occupied by the applicants were made *ex post facto*. They had no bearing on the events which led to the applicants ceasing to be Members of Parliament and their seats becoming vacant in terms of s 129(1) of the Constitution. The respondents contended that, as the applicants' seats in Parliament became vacant by reason of

the operation of s 129(1), as read with s 129(1)(k), of the Constitution, the applicants lost their seats lawfully. Compliance with the provisions of one section of the Constitution cannot constitute an infringement of a fundamental right protected by another section of the same Constitution.

The applicants submitted that the Speaker and the President of the Senate ought to have carried out inquiries to satisfy themselves that the written notices were issued by the political party of which they were members when they were elected to Parliament. They argued that there was no "political party concerned" because there was a split in the MDC-T. According to the applicants, there was no legitimate political party to give written notices to the Speaker and the President of the Senate declaring that they had ceased to belong to it.

Section 129 of the Constitution provides:

"**129 Tenure of seat of Member of Parliament**

(1) The seat of a Member of Parliament becomes vacant -

(a) – (j) … (not relevant);

(k) 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."

The interpretation given to s 129(1)(k) of the Constitution must be consistent with the spirit, purport and objects of the Constitution.

The main argument was that there was no "political party concerned" to forward to the Speaker or the President of the Senate the written notice required under s 129(1)(k) of the Constitution. The allegation was that the MDC-T split into two formations, with the effect that no entity called MDC-T was left in existence. The facts do not support the contention.

A political party is a product of a voluntary association of people who share a common ideology on how the affairs of the State should be administered and believe that if some of the members are elected to Parliament, and the political party gets control of the levers of Governmental power, they will use them for the benefit of all citizens. It is constituted in terms of its own constitution and as such is a legal entity independent of members. The applicants were elected on MDC-T tickets. They had differences with other members of the MDC-T concerning the style of leadership of the Party. They convened a meeting at the Mandel Training Centre, discussed their grievances and resolved to leave the MDC-T.

It is clear from their own founding affidavits that the meeting at the Mandel Training Centre had not been sanctioned by the party structures. It was not chaired by the Chairman of the MDC-T. The conduct of the applicants was in violation of the constitution of the Party. The applicants formed a separate entity with its own bank account, signatories and headquarters. The rest of the members of the MDC-T did not reconstitute themselves. They did not create a separate formation. The MDC-T Congress then decided that the applicants, along with others, had left the MDC-T. At that point, and before they formed the splinter group, the applicants were aware that s 129(1)(k) of the Constitution could be invoked against them.

The applicants, as a group, decided on their own to terminate their memberships of the MDC-T. The fact that they agreed to constitute themselves into a formation after they had terminated their memberships does not in itself mean that the others, who were not members of their group, constituted themselves into another formation. Those who did not join their group continued to regard themselves as the MDC-T. Mr Biti wrote a letter to the Speaker, in which he referred to the formation of an entity called the "Renewal Democrats Team".

The reason why the applicants did not challenge the validity of the cessation of their memberships of the MDC-T in a court of law was that they left the MDC-T of their own

volition. Just as they had exercised their rights in freely choosing to join the MDC-T, they freely and voluntarily withdrew their memberships from it. That is why they sought to challenge the validity of the announcements of the vacancies in their seats by the Speaker and the President of the Senate.

Mr *Uriri* sought to rely on *Prebble* v *Huata* [2004] NZSC 29, a decision of the Supreme Court of New Zealand, for the proposition that the Speaker and the President of the Senate needed to satisfy themselves that a Member being recalled has ceased to belong to "the political party concerned". The case is not helpful in any way to the applicants' case. It was common cause that the applicants had left the MDC-T voluntarily. The written notices came from the Secretary General of the MDC-T, from which the applicants had voluntarily withdrawn their memberships.

The ancillary question is whether an act done in terms of the provisions of the Constitution can violate a person's rights in terms of the same Constitution. The question is answered in the negative. An act lawfully done in terms of the Constitution cannot violate a person's rights under the same Constitution.

The applicants sought to challenge the validity of the actions by the Speaker and the President of the Senate on the basis of the allegation that they violated the fundamental rights enshrined in ss 69(3), 68(1) and 56(1) of the Constitution.

A Member of Parliament loses his or her seat in the specific circumstances prescribed under s 129 of the Constitution. Section 129(1)(k) of the Constitution provides for one of the circumstances prescribed. One cannot read any other value into the section, because s 129(1)(k) of the Constitution is a complete provision that is not subject to the Bill of Rights. The wording of s 129(1)(k) of the Constitution is clear. Like any other provision of the Constitution, s 129(1)(k) is a fundamental law, partaking of the status of supremacy of the Constitution,

against which the validity of conduct can be measured. It is not permissible to import notions from other constitutional provisions to impose a duty that was not intended to be part of the requirements of a particular constitutional provision.

The purpose of s 129 of the Constitution is to provide for circumstances in which the tenure of seat of a Member of Parliament comes to an end. Section 129(1)(k) of the Constitution specifies one of the circumstances in which the tenure of seat of a Member of Parliament comes to an end and the seat becomes vacant. Tenure of seat of a Member of Parliament means the tenure of the right of a Member of Parliament to occupy the seat following an election. The provisions of s 129(1)(k) of the Constitution may be summarised as being that –

(a) The Member of Parliament should have been a member of a political party when he or she was elected to Parliament;

(b) The Member of Parliament should have ceased to belong to the political party, either by voluntary withdrawal of membership or by being expelled from the political party concerned; and

(c) The political party concerned should have given a written notice to the Speaker or the President of the Senate of the cessation of membership of it by the Member of Parliament. In the written notice the political party concerned must declare that the Member of Parliament has ceased to belong to it.

Section 129(1)(k) of the Constitution relates to a legal process that has its beginning in the relationship between the Member of Parliament and the political party to which he or she belonged at the time he or she was elected to Parliament. The first fact to trigger the s 129(1)(k) process is cessation of the status of belonging to the political party concerned by the Member of Parliament. Ceasing to be a member of the political party concerned is the main event. The

legal effect on the creation of a vacancy in the seat of the Member of Parliament depends on the subsequent events, which are procedural and communicative in nature.

The status of having ceased to be a member of the political party concerned is a matter of fact, the legality of which is determined by reference to the provisions of the constitution of the political party concerned. It may be a fact resulting from a process of expulsion or voluntary resignation. When it occurs, it remains a matter affecting the internal affairs of the political party concerned. It may remain so without any effect on the tenure of seat of the Member of Parliament unless the political party concerned takes the action prescribed under s 129(1)(k) of the Constitution and communicates the fact that the Member of Parliament has ceased to belong to it to the person appointed to receive the communication.

For the communication to have the legal effect it is required by the Constitution to have, it must not only take a specific form and contain a specific message, it must be addressed to a specific official. The content of the message communicated should be the fact that the Member of Parliament who is specifically identified by name has ceased to be a member of the political party concerned of which he or she was a member when he or she was elected to Parliament.

The fact that the Member of Parliament has ceased to be a member of the political party concerned must be communicated to the Speaker or the President of the Senate by means of a written notice that takes the form of a declaration. The official who signs the written notice must ensure that it declares that the Member of Parliament has ceased to be a member of the political party concerned. A declaration of fact is considered to be a solemn statement of truth that must have the legal effect designed to flow from it. The receipt by the Speaker or the President of the Senate, who are the only officials designated to receive the written notice complying with these procedural and substantive requirements of the written notice envisaged

under s 129(1)(k) of the Constitution, grants to the written notice the legal effect it is intended to have.

The purpose of the written notice by the political party concerned, disclosing to a third party a fact relating to its internal relationship with a member, would have been to reclaim the seat in Parliament won by the Member of Parliament on its ticket. Section 129(1)(k) of the Constitution makes it clear that the legal effect of the receipt by the Speaker or the President of the Senate of a written notice complying with all the formal and substantive requirements is to create a vacancy in the seat in Parliament occupied by the Member who has ceased to be a member of the political party of which he or she was a member when elected to Parliament.

A number of considerations flow from the effect of s 129(1)(k) of the Constitution. It is the fact of the cessation of membership of the political party and its communication to the Speaker or the President of the Senate in the form and manner prescribed that creates a vacancy in the seat occupied by the Member who will have ceased to be a member of the political party concerned.

A vacancy in the seat in Parliament is not created by an act of the Speaker or the President of the Senate. It is created as a direct legal consequence of events, the origin of which lies outside Parliament. Termination of the tenure of the right of the Member of Parliament to occupy the seat is what the Constitution, through s 129(1)(k), says must happen when all the procedural and substantive requirements of the provision have been met.

The origin of the act concerned lies in the relationship between the political party concerned and the Member of Parliament who was its member when he or she was elected to Parliament. If the cessation of the membership of the political party concerned was by expulsion, it is that act of expulsion that has the potential of creating a vacancy in the seat

occupied by the Member of Parliament. The potential consequence of the act materialises when it is communicated to and received by the official appointed to receive it in the form and with the substance prescribed. Similar consequences will follow if the termination of the membership of the political party is by resignation.

The Speaker or the President of the Senate would have had no control over the events affecting the relationship between the Member of Parliament and his or her political party. A Member of Parliament whose termination of the membership of a political party is by expulsion is not expelled from Parliament. He or she is expelled from the political party.

The Speaker or the President of the Senate cannot be accused of expelling a Member from Parliament whose seat becomes vacant because his or her right to represent the political party of which he or she was a member when elected to Parliament would have been terminated by operation of law.

The accusation against the Speaker and the President of the Senate of having expelled the applicants from Parliament shows a failure by the applicants to understand the rôle of the Speaker or the President of the Senate in the process prescribed by s 129(1)(k) of the Constitution leading to the creation of a vacancy in the seat of a Member of Parliament. The accusation also suggests that the Speaker or the President of the Senate is required to involve himself or herself in some quasi-judicial inquiry into the conduct of the Member of Parliament in which he or she finds the Member guilty of some form of misconduct for which expulsion from Parliament becomes the penalty. The rôle of the Speaker or the President of the Senate in the process leading to the creation of a vacancy in the seat of a Member of Parliament in terms of s 129(1)(k) of the Constitution is facilitative. It is not judicial in nature.

The rôle the Speaker or the President of the Senate has to play in the process is to satisfy himself or herself that the document he or she has received is from a political party and that it contains a written notice declaring that the Member of Parliament who was a member of that political party when elected to Parliament has ceased to belong to the political party concerned. The Speaker or the President of the Senate has no power to prevent the occurrence of the creation of the vacancy in the seat of a Member of Parliament commanded by s 129(1)(k) of the Constitution as the consequence of the communication and receipt of the written notice.

The announcements by the Speaker and the President of the Senate of vacancies in the seats in Parliament occupied by the applicants were done for purposes of informing the Members of the respective Houses of what had happened. They were not and could not be announcements of the results of decisions they had themselves taken to create the vacancies in the seats in Parliament. The Speaker and the President of the Senate did not pretend to have the power to create vacancies in the seats occupied by the applicants in Parliament.

The applicants did not deny the fact that the creation of the vacancies in the seats in Parliament occurred before the announcements. The announcements were separate *ex post facto* occurrences, with their own purposes to serve in the performance of administrative functions by the Speaker and the President of the Senate.

The reports the Speaker and the President of the Senate gave to the third and fourth respondents were in fulfilment of the requirements of s 39(3) of the Electoral Act. The reports cannot be related to the satisfaction of the requirements of s 129(1)(k) of the Constitution.

The question that should have been asked and answered by the applicants before instituting these proceedings was whether what was done by the Speaker and the President of the Senate was a failure to comply with the requirements of s 129(1)(k) of the Constitution.

Did the Speaker and the President of the Senate do any act inconsistent with the provisions of s 129(1)(k) of the Constitution? If what was done had no substantive bearing on the requirements of s 129(1)(k) of the Constitution for the creation of a vacancy in a seat of a Member of Parliament, the attack on its validity is of no relevance in the determination of the question of the matter in dispute. The matter in dispute was the validity of the creation of vacancies in the seats of the Members of Parliament concerned in terms of s 129(1)(k) of the Constitution.

Mr *Uriri* relied on the decision of the Supreme Court of India in *Kihoto Hollohan* v *Zachillhur and Others* [1992] Supp. (2) SCC 651. The Supreme Court of India said:

> "In the Indian constitutional dispensation, the power to decide a disputed disqualification of an elected Member of the House is not treated as a matter of privilege and the power to resolve such electoral dispute is clearly judicial and not legislative in nature. The power to decide disputed disqualification under Paragraph 6(1) is pre-eminently of a judicial complexion. [pp.759G. 763C] *Indira Nehru Gandhi* v *Raj Narain*, [1976] 2 SCR 347; Special Reference 700 No. 1 of 1964 [1964] INSC 209; [1965] 1 SCR 413 and *Express Newspaper Ltd* v *Union of India*, AIR 1958 SC 578, referred to. *Australian Boot Trade Employees Federation* v *Whybrow & Co*. [1910] HCA 8; 1910 10 CLR 266, referred to."

In India, between 1967 and 1983 about one Government collapsed each month on account of defections. At times an average of one legislator changed his or her affiliation each day. During the period extending from 1967 to 1972, sixty percent of the elected Members of Legislatures defected at least once. During the period there were 2 700 defections. Hence Parliament amended the Constitution and added the Tenth Schedule to the Constitution prohibiting defections. See: T K Tope "*Constitutional Law of India*" 2 ed at 1006.

The Constitution (Fifty-Second Amendment) Act, 1985 (popularly known as "the Anti-Defection Law") inserted the Tenth Schedule in respect of the provisions of Articles 102(2) and 191(2). The Tenth Schedule provided for the disqualification of a Member of either House of Parliament or of a State Legislative Assembly. Paragraph 1 of the Tenth Schedule provides

that a Member of the House of Parliament or State Legislative Assembly incurs disqualification if he or she voluntarily gives up his or her membership of the political party by which he or she was put forward as a candidate at the election. A member also incurs disqualification if he or she, without obtaining prior permission of the political party to which he or she belongs, votes or abstains from voting in the House of Parliament or State Legislative Assembly contrary to "any direction" issued by such political party and such voting or abstention has not been condoned by such political party within fifteen days from the date of such voting or abstention. Disqualification could also be incurred if a Member elected otherwise than as a candidate set up by any political party joins a political party after the elections; or if a nominated Member joins any political party after expiry of six months from the date he or she took his or her seat.

Paragraph 5 of the Tenth Schedule of the Constitution of India provides that, whenever a question arises whether a Member has become subject to disqualification, that matter shall be referred for decision to the Chairman or Speaker, as the case may be, and his or her decision shall be final. According to Paragraph 6, all proceedings under Paragraph 5 shall be treated as internal proceedings of the House of Parliament or State Legislative Assembly within the meaning of Articles 122 or 212 of the Constitution of India and no court shall inquire into the proceedings. Paragraph 7 provides that no court, including the High Court and the Supreme Court, shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of the House of Parliament or State Legislative Assembly under the Tenth Schedule. The law itself provided that questions of disqualification were to be decided by the Chairman or the Speaker, as the case may be, and his or her decision was final. The Constitution of India itself gave judicial powers to the Chairman or the Speaker. There is no similar provision in our Constitution.

The important aspect of the provisions of the Tenth Schedule to the Constitution of India is that the legal effect of defection by a Member from the political party to which he or

she belonged when elected to the House of Parliament or the State Legislative Assembly is disqualification as a Member of the House of Parliament or the State Legislative Assembly. In other words, the seat becomes vacant by reason of the disqualification resulting from the act of defection. In that way, there would be no benefit accruing from defection. There would be no floor-crossing. A situation where a Member of Parliament, who has lost his or her membership of the political party to which he or she belonged when elected, retains the right to remain a Member of Parliament or the State Legislative Assembly with the capacity to vote with any other party against the former political party is prevented.

Mr *Uriri* further sought to rely on the *Kihoto Hollohan* judgment *supra* to suggest that the Speaker or the President of the Senate exercises quasi-judicial functions when he or she acts in terms of s 129(1)(k) of the Constitution. That argument does not accord with the interpretation of s 129(1)(k) of the Constitution. Sight ought not to be lost of the fact that the loss by a Member of Parliament of the right to occupy a seat in Parliament in terms of s 129(1)(k) of the Constitution is not a matter within the discretion of the Speaker or the President of the Senate. It happens by operation of law. The rôle of the Speaker or the President of the Senate is to receive the written notice which conforms with the prescribed form, bearing the required contents. All the Speaker or the President of the Senate has to do is to satisfy himself or herself that the written notice communicated to him or her is the document contemplated in s 129(1)(k) of the Constitution.

The applicants in the first case say that the Speaker arrogated to himself "judicial authority" and determined that the letter written by the Secretary General of the MDC-T was to be given precedence over the letter written by Mr Biti. It is difficult to understand how the applicants can allege that the Speaker ought to have enquired into the legality of the process by which the applicants ceased to members of the MDC-T.

The applicants do not seek any relief relating to s 129(1)(k) of the Constitution, in terms of which the process they are complaining about was conducted. In essence, the applicants sought to argue that the Speaker and the President of the Senate are duty bound to enquire into the fairness of the process by which a person ceases to be a member of a political party.

The law requires the Speaker and the President of the Senate only to accept that a person has ceased to be a member of a political party as communicated by the written notice. They have no power to enquire into the legality of the processes which lead to the eventuality of the cessation by the Member of Parliament of membership of the political party concerned. The section gives the political party to which a Member of Parliament belonged a right to have the seat rendered vacant. In the exercise of that right, the political party concerned, through an officer authorised to do so, is required to forward a written notice to the Speaker or the President of the Senate, declaring that a Member of Parliament has ceased to belong to it. The political party concerned is required to comply with the form and content of the communication.

Section 129(1)(k) of the Constitution is a provision clearly intended to benefit a political party in order to protect it from members who abandon its cause. The provision is meant to avert floor-crossing. It is the political party concerned which is ultimately answerable to the people.

The object of s 129(1), as read with s 129(1)(k), of the Constitution, like the anti-defection provisions of the Tenth Schedule to the Constitution of India, is to preserve and promote democracy. The vacancy is created in a seat of a Member of Parliament, who has ceased to belong to the political party of which he or she was a member when elected, to give the electorate the right to decide in a bye-election whether to give the mandate to represent them in Parliament to the political party concerned or to the same person who lost the seat if he or she stands as an independent candidate or as a candidate sponsored by another political

party. The purpose of the requirement that the Speaker or the President of the Senate should advise the President of Zimbabwe and the Chairperson of the Zimbabwe Electoral Commission, in terms of s 39(1) of the Electoral Act, of the vacancy in the seat of a Member of Parliament is to ensure that a bye-election is called.

Jennings "*Cabinet Government*" (3 ed p 472) states that a Member of Parliament elected on a political party ticket has two obligations. He or she has an obligation to the political party. He or she also has an obligation to the electors. The obligation to the political party is to support it for the normal duration of Parliament. The obligation to the electors stems from the fact that, in modern times, the elector, speaking broadly, casts his or her vote for a particular individual, not because of his or her individual merits, but because he or she is put forward by the party for which the elector desires to vote. The successful candidate is almost invariably returned to Parliament, not because of his or her judgment and capacity, but because of his or her political party label. His or her personality and his or her capacity are alike unknown to the great mass of his or her constituency. His or her own electioneering is far less important than the impression which his or her political party creates in the minds of the electors. They vote for or against the party to which he or she belongs.

The candidate who stands on a political party ticket represents to the electors that he or she will support the party and its general programme, and that he or she will abide by the decisions of the majority of the party once those decisions are taken. If a person has uncompromising views on various issues which may not harmonise with the views of any political party, his or her proper course is to stand as an independent candidate. But those that desire that effect should be given to certain views and policies on which a number of people are agreed should join or form a political party, as that is the only effective way of implementing those policies. However, working together with a group of people pledged to

carry out broad policies means that the right of dissent is greatly restrained, for in no other way can policies on which there is broad agreement be carried out.

The kind of democracy which has been set up by our Constitution and the conditions under which that democracy must operate bear testimony to the views on the relationship between a member and his or her political party. Zimbabwe is a multi-party democracy. In adopting a multi-party democracy, the makers of the Constitution assumed there would be multiple political parties, as in fact there are.

It is for these reasons that the Court found the applications to be without merit.

CHIDYAUSIKU CJ:

ZIYAMBI JCC: I agree

GWAUNZA JCC: I agree

GARWE JCC: I agree

GOWORA JCC: I agree

HLATSHWAYO JCC: I agree

PATEL JCC: I agree

GUVAVA JCC: I agree

Tendai Biti Law, applicants' legal practitioners

Chihambakwe, Mutizwa and Partners, first and second respondents' legal practitioners

Civil Division of the Attorney General's Office, third respondent's legal practitioners

Nyika, Kanengoni & Partners Legal Practitioners, fourth and fifth respondents' legal practitioners