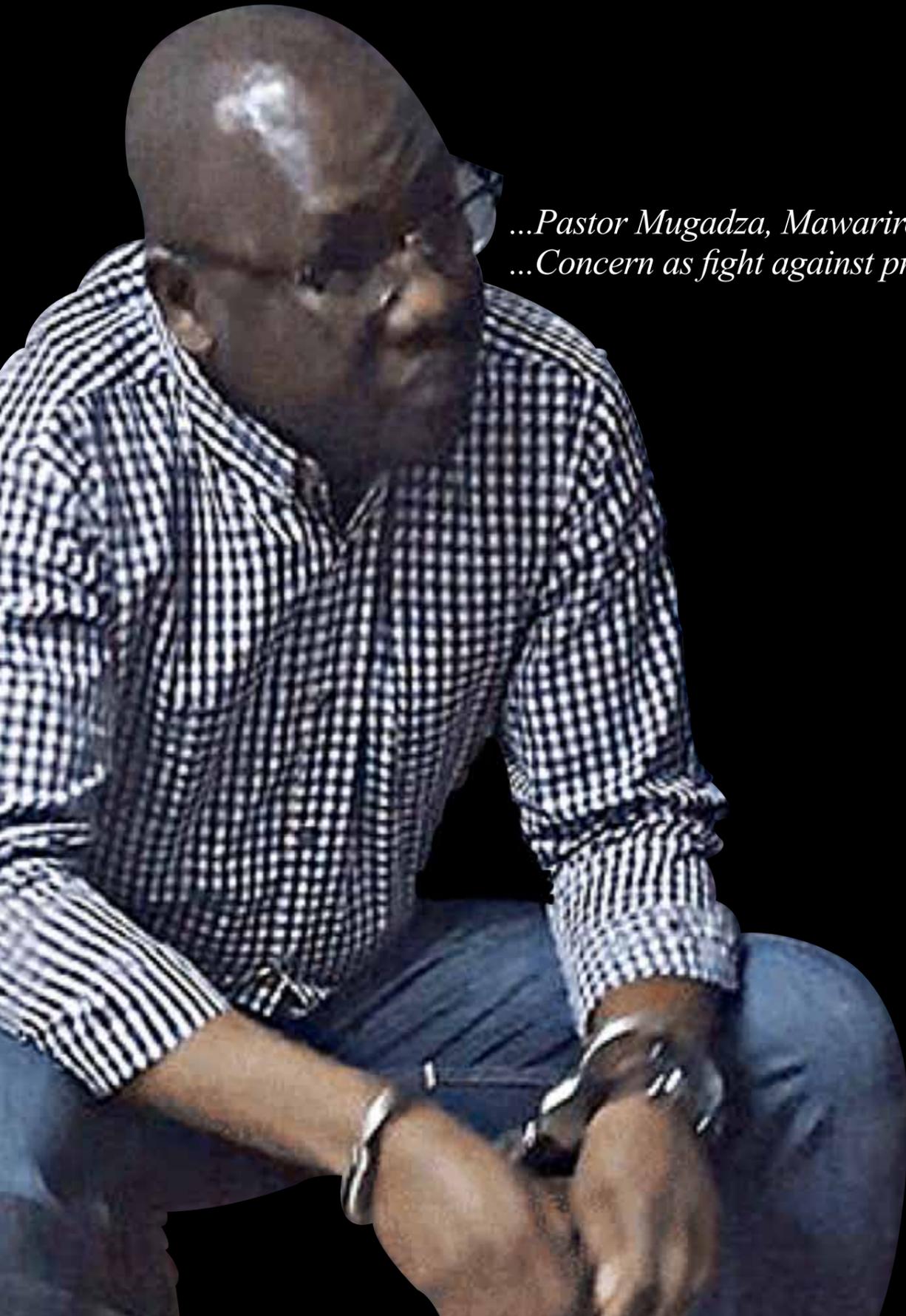


Pastors' pain

See Pages 2 & 3

*...Pastor Mugadza, Mawarire pay with jail for speaking truth to power
...Concern as fight against pro-democracy clergy intensifies*



Pastor Evan Mawarire



Pastor Philip Mugadza

The truth shall set you for jail

...Pastors endure arrests, detention for speaking out

HARARE-It is often said the truth shall set you free, but not in this country and Pastors Philip Mugadza and Evan Mawarire will testify to this.

In Zimbabwe, speaking truth to the powers-be seems a sure path to jail – or at least a few nights in a filthy and overcrowded police cell.

It is increasingly becoming risky for people who are in the business of speaking the truth to stay true to their vocation amid hostility from the State.

Pastors Mugadza and Mawarire, known for being outspoken in their defence of human rights, bear testimony to the dangers of such a calling.

State agents appear to have thrown caution to the wind, and are going after religious leaders who dare speak out with more force than before.

Pastor Mugadza of the Remnant Church has been languishing in remand prison for weeks.

Pastor Mawarire, of the His Generation church, just spent two nights in police detention and faces charges that attract more than 20 years in jail. He had the same experience last year before he was acquitted of trying to subvert President Robert Mugabe's government.

Both Mugadza and Mawarire have borne the brunt of State harassment before, but this time, the State seems determined to ensure they endure lengthy jail time.

Mugadza was denied bail on 19 January because the court feared he could "commit similar crimes."

Similar crimes, as advanced by State prosecutors, refer to chaining himself near Parliament in protest against the deteriorating human rights situation last year, allegedly wearing the national flag without permission from authorities last year and embarking on a one-man demonstration during the ruling ZANU-PF party conference in 2015 in Victoria Falls.

On 19 January this year, Harare Magistrate Vongai Muchuchutu ruled that Mugadza should stay in remand prison while awaiting trial on his latest charges of criminal nuisance after allegedly prophesying that President Mugabe will die this year.

Earlier on, Magistrate Muchuchutu dismissed an application filed by Gift Mtisi of Zimbabwe

Lawyers for Human Rights (ZLHR) challenging the lawfulness of the clergyman's arrest and detention. Mtisi had argued that Mugadza's constitutional right to be brought to court from police cells within 48 hours had been violated as he was only hauled to court after 51 hours.

Magistrate Muchuchutu also dismissed Mtisi's application for refusal of placement of Pastor Mugadza on remand.

Pastor Mugadza was arrested three weeks ago and charged with contravening Section 42 (2) of the Criminal Law (Codification and Reform) Act Chapter 9:23 alternatively criminal nuisance as defined in Section 46 (2) (v) of the third schedule to the Criminal Law (Codification and Reform) Act Chapter 9:23.

Prosecutors charged that Pastor Mugadza caused the publication of a story in an online publication, The Zimbabwe Mail on Friday 13 January 2017 entitled "Pastor Mugadza says President Mugabe to die in October 2017, thus says the Lord".

Prosecutors claimed that Pastor Mugadza allegedly insulted the Christian religion and the African tradition by uttering some words which are a taboo to predict someone's death and words to the effect that: "It was on the 26th December 2016 when I was in prayer and God said to me this coming 2017 the President is dying and he told me that he is dying on 17 October 2017, like I said earlier on that am not happy for someone to die but this is something that is going to happen. People may ask me what if he does not die. I do not know how much he believes in prayer but he has to do something about this prophecy".

As for Pastor Mawarire, he was picked up as he stepped out of the plane on his way back home after spending some time in the United States on Wednesday last week at Harare International Airport on his return home.

He was detained at Harare Central Police Station before he was charged with subverting a constitutional government as defined in Section 22 (2) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

According to a warned and cautioned statement, which was recorded from Pastor Mawarire on Wednesday evening, police alleged that the clergyman incited Zimbabweans from "all walks of

life either locally or internationally" to revolt and overthrow a constitutionally elected government.

The police charged that Pastor Mawarire, who is represented by Harrison Nkomo and Sharon Hofisi, of ZLHR, circulated several videos on social media platforms inciting Zimbabweans "to stage violent demonstrations to subvert the constitutional government of Zimbabwe and resultantly from August 2016 to January 2017 there have been violent demonstrations in the country where several property was destroyed."

The police officers alleged that on 15 September 2016, Pastor Mawarire incited some Zimbabweans living in the USA and "all over the world" through social media to converge in New York on 22 September 2016 to "confront" President Mugabe, who was attending the United Nations General Assembly and order him to "immediately" resign from his position accusing him of destroying the country.

In July 2016, ZRP officers arrested and charged Pastor Mawarire with inciting public violence at a time when Zimbabweans staged crippling anti-government protests before prosecutors altered the charges to attempting to overthrow a constitutional government.

However, Harare Magistrate Vakai Chikwekwe set free the clergyman after ruling that ZRP officers had violated his constitutional rights in arresting and detaining him and that it was also unconstitutional for prosecutors to bring fresh charges against the clergyman while in court.

In September last year, President Mugabe told his ruling ZANU PF party supporters upon returning from New York that Pastor Mawarire was a "great shame" and a "disgrace" for "allowing himself to demonstrate against the country" during the United Nations General Assembly.

Bitter home coming

...Govt 'welcomes' Mawarire with arrest, detention
...Clergyman's arrest signals tough times ahead for HRDs

HARARE-As he travelled back home, Pastor Evan Mawarire told a journalist: "I'm coming home, and I don't know what is going to happen."

Now he knows.

And so does the entire world as State security agents wasted no time in turning Mawarire's homecoming into a horror experience.

His arrest showed how Zimbabwe's government is not letting up on the harsh restrictions it has imposed on Human Rights Defenders (HRDs) for decades.

Mawarire's arrest, minutes after he landed at Harare International Airport last week, sent a clear message that the operating environment for HRDs and civil society in general is set to remain constrained ahead of elections next year.

The youthful Pastor left the country as a free man after Harare Magistrate Vakayi Chikwekwe threw away charges of subverting a constitutionally elected government in July last year.

Yet on Mawarire's return and subsequent arrest, police spokeswoman Charity Charamba claimed that he had skipped the country, hence a warrant of arrest hung over his head.

After two nights in police detention, Mawarire was on Friday at the Harare Magistrates Court answering charges of subverting a constitutionally elected government, inciting public violence and abusing the flag.

He faces more than 20 years in jail for merely speaking out against what he deemed as corruption in government circles, human rights abuses and government's lack of concern for long-suffering Zimbabweans.

Human rights groups condemned the actions of the State, describing Mawarire's arrest as part of the scare tactics routinely used against HRDs.

"It is designed to make him stop his human rights activism and to punish him for speaking out about the declining human rights situation in Zimbabwe," said Amnesty International in a statement.

Mawarire's arrest and the routine crushing of activists' protests by the police comes two months after Zimbabwe pledged to respect human rights and freedoms contained in the Constitution.

Speaking at the Universal Periodic Review session in Geneva in November, Vice President Emmerson Mnangagwa, who was representing Zimbabwe said, the country was committed to respecting the rights and freedoms enshrined in the Constitution.

The government even accepted to implement 131 recommendations, which included observance of human rights.

It appears a different story on the ground.

"In November 2016, during the United Nations Human Rights Council periodic review in Switzerland, government assured the council that its human rights record had significantly improved which seems contrary to this incident," said Heal Zimbabwe Trust, a local civil society organisation expressing concern at the mixed messages sent by government.

One message seems clear enough though.

Mawarire and those linked to the pro-democracy cause will have to endure a protracted struggle.

For now, it appears the government is not ready to listen to their demands - at least not just yet.



ENFORCED DISAPPEARANCE = CRIME AGAINST HUMANITY

HRDs WITNESS AGAINST VIOLENCE WHERE ARE THEY? HELP IN THEIR SAFE RETURN

Call Hotline: 0779 204 102

Itai Dzamara Missing since 2015

Paul Chizuze Missing since 2012

National pledge: ConCourt reserves ruling

HARARE- The Constitutional Court is now expected to rule on an application filed by an aggrieved parent, who is challenging the government's move to force all school children to recite a national pledge, which he alleges violates his children's fundamental rights.

The application was heard last Wednesday and the court reserved judgment on the case. The national pledge was introduced in May last year and is recited by all pupils enrolled in the country's primary and secondary schools. But 46-year-old Mathew Sogolani challenged the constitutionality of the national pledge, arguing that it violates his children and his own constitutional rights.

In his application, which was filed in the Constitutional Court in April 2016 by David Hofisi of Zimbabwe Lawyers for Human Rights, Sogolani, whose three minor children are enrolled in infant, primary and secondary schools respectively, argued that forcing children to recite contents of the pledge run contrary to the family's religious beliefs.

Sogolani, a member of the Apostolic Faith Mission (AFM) Church, wants the Constitutional Court to suspend the requirement that school children recite the pledge.

Hofisi said his client finds the national pledge offensive to his faith as it includes secular salutations in an address to Almighty God.

The human rights lawyer argued that the pledge would vitiate Sogolani's rights to dignity, freedom of conscience, freedom of expression and equal protection of the law – rights that are all enshrined in the Constitution.



Mathew Sogolani, the Epworth parent challenging the National Pledge, in the company of his lawyers David Hofisi and Dzimbabwe Chimba of ZLHR outside the Constitutional Court

The human rights lawyer added that the pledge is formulated "in the manner of an oath, a prayer and seems, in the very least, a religious observance".

In his founding affidavit filed at the court, Sogolani argued that the national pledge is offensive to his religious convictions and thus in violation of Sections 51, 56 (1), (3), 60 (1), (2), (3) and 61 (1) (a) of the Constitution.

Deputy Chief Justice Luke Malaba, who sat together with the Full Bench of the Constitutional Court, reserved judgment after hearing arguments from Hofisi and Advocate Lewis Uriri, who represented the Ministry of Primary and Secondary Education and which opposed the application.

Mawarire case Timeline

- 20 April 2016** - Mawarire records a selfie video complaining about the deteriorating situation in Zimbabwe while draping the Zimbabwe flag. In the video he talks about the significance of the flag colours and how they have lost significance because of corruption and bad governance.
- 20 April 2016** - Mawarire's video attracts a huge 120 000 views on the first day of its release
- April-June 2016** - #ThisFlag campaign goes viral. People post selfies wearing the Zimbabwe flag and videos ranting about human rights abuses, corruption and bad governance. #ThisFlag campaign becomes topical subject in Parliament
- Late June 2016** - Mawarire calls for a stayaway dubbed #ShutDownZimbabwe via social media on July 6.
- 6 July 2016** - People heed the stayaway call, which becomes the biggest shutdown protest action Zimbabwe has witnessed in a decade.
- 8 July 2016** - Mawarire calls for another stayaway for 13 and 14 July.
- 11 July 2016** - Mawarire announces that he has been summoned to Harare Central Police Station
- 12 July 2016** - Mawarire and his lawyer Harrison Nkomo report at Harare Central Police Station. Mawarire is charged under the Criminal Law (Codification and Reform) Act for inciting public violence.
- 12 July 2016** - Police detectives lead Mawarire to his house and Church to search the properties purportedly looking for a stolen police helmet and truncheon as well as "subversive material".
- 13 July 2016** - Hundreds of people start gathering at Harare Magistrates Court early in the morning in anticipation of Mawarire's appearance
- 13 July 2016** - Mawarire appears in court late in the afternoon. Sudden turn of events as State changes charges to subverting a constitutional government. Defence lawyer Nkomo, argues that Mawarire should be released as he has been brought before the court illegally. Nkomo argues that police had not recorded a warned and cautioned statement on the new charges.
- 13 July 2016** - Magistrate Vakayi Chikwekwe agrees with Nkomo and sets free Pastor Mawarire.
- 13 July 2016** - Pastor Mawarire salutes thousands of Zimbabweans who braved the chilly weather to stage a vigil at the court.
- 14 July 2016** - Pastor Mawarire leaves the country fearing for his life and his family later joins him. He indicates that he will be returning home at some point.
- 21 August 2016** - Pastor Mawarire says he has gone into "temporary exile" in the United States due to security concerns after suspected State security operatives threatened to abduct his children and rape his wife.
- 1 February 2017** - Just prior to returning to Zimbabwe, Pastor Mawarire tells South African media why he is going home: "Zimbabwe is home for me and my family. That's the place where we have a right to be without acquiring a visa, we are citizens of Zimbabwe. The President of Zimbabwe made comments to the effect that I was not welcome in Zimbabwe, but he doesn't get to make that decision for me. I have not committed a crime, I'm not a fugitive, I'm a citizen, and an upstanding citizen for that matter."
- 1 February 2017** - Pastor Mawarire is arrested on arrival at Harare International Airport attracting local and international condemnation of President Robert Mugabe's government decision. He is charged with subverting a constitutionally elected government.
- 2 February 2017** - More charges against Pastor Mawarire as he is charged with inciting public violence and insulting the flag.
- 3 February 2017** - Harare Magistrate Elisha Singano remands Pastor Mawarire in custody to 17 February after he dismissed an application filed by his lawyer challenging his placement on remand. Pastor Mawarire's lawyer Harrison Nkomo of Zimbabwe Lawyers for Human Rights had asked Magistrate Singano to release the clergyman after challenging the State's request to place him on remand. But Magistrate Singano dismissed Pastor Mawarire's application and advised Nkomo to approach the High Court for the determination of bail.

'Sham'

In response to the arrest of Zimbabwean Pastor Evan Mawarire at the Harare International Airport and his subsequent transfer to the Harare Central Police Station where he is being detained upon his return to the country this afternoon, Amnesty International's Deputy Regional Director for Southern Africa, Muleya Mwananyanda, said:

Evan Mawarire this afternoon is absolutely ridiculous and a total sham.

"Coming after a similar charge against him last year, it is designed to make him stop his human rights activism and to punish him for speaking out about the declining human rights situation in Zimbabwe.

"The authorities must immediately and unconditionally release Pastor Evan Mawarire, as he is a prisoner of conscience imprisoned solely for the peaceful exercise of his rights."

Background
Pastor Evan Mawarire was previously arrested on 12 July 2016 after he was charged with incitement to commit public violence under the Criminal Law Act for leading a national shutdown between 13 and 14 July 2016 against "corruption" and the declining economy.

U.S. Embassy Harare

The U.S. Embassy is extremely concerned by the arrest of Pastor Evan Mawarire upon his return to Zimbabwe and we call for his immediate release. Pastor Evan is a citizen of Zimbabwe and should be allowed to live freely in his home country. We unequivocally believe in the basic right to freedom of speech and call on the Government of Zimbabwe to respect and to protect the human rights of all Zimbabwean citizens which are enshrined in the constitution.

Heal Zimbabwe condemns the unlawful arrest of Pastor Evan Mawarire

Heal Zimbabwe strongly condemns the unlawful arrest of #ThisFlag Movement Founder, Pastor Evan Mawarire. Mawarire was arrested today, 2 February 2017 at Harare International Airport upon arriving aboard the South African Airways plane. As soon as he landed, Pastor Mawarire was whisked away by plain clothes detectives as his relatives who had come to welcome him back watched in utter shock.

Heal Zimbabwe notes that the infringement of citizens' rights such as unlawful arrests and detentions are a violation of citizens' fundamental

human rights that are provided for in the constitution. In November 2016, during the United Nations Human Rights Council periodic review in Switzerland, Government assured the council that its human rights record had significantly improved which seems contrary to this incident.

Before Pastor Mawarire left Zimbabwe, he led peaceful stay aways as a way of registering displeasure by citizens over the current Government's reluctance to act on vices such as corruption. His protests on social media also decried the state of the economy and poor social service delivery.

Amnesty International Press Release

Zimbabwe: Additional charge against Pastor Mawarire a desperate ploy to keep him behind bars

The additional charge of "Insulting the Flag of Zimbabwe" slapped on Pastor Evan Mawarire this morning is a deliberate ploy to prolong his detention and block his human rights work, Amnesty International and CIVICUS said today.

The Pastor was due to appear in court this morning and make a bail application after being arrested yesterday on arrival at Harare International Airport and charged with subversion in relation to his peaceful human rights work.

"The Zimbabwean authorities are using the oldest tricks in the book by misusing the criminal justice system to target Pastor Evan Mawarire. He has committed no crime but to take a stand against human rights violations," said Muleya Mwananyanda, Amnesty International's Deputy Director for Southern Africa.

The move by the authorities to add the charge appears to be intended to delay the presentation of Pastor Mawarire before a court, in contravention of the Constitutional provision that requires that all detainees appear before

court no later than 48 hours after the arrest.

"The charges against Pastor Evan Mawarire are clearly politically motivated and designed to intimidate and harass him. He must be immediately and unconditionally released. He is the victim of a government bent on criminalizing dissenting voices," said Sara Brandt, Policy and Research Analyst, CIVICUS.

Pastor Evan Mawarire was arrested on 1 February 2017 at Harare International Airport as he returned to the country after being forced to flee to the USA. He is being held at Harare Central Police Station.

Background

Pastor Evan Mawarire, founder and one of the leaders of the #Thisflag movement, led several anti-government protests in 2016 against corruption, human rights violations and the declining economy in the country.

He was previously arrested on 12 July 2016 and charged with incitement to commit public violence after leading a national shutdown between 13 and 14 July 2016. He was released after a magistrate found his arrest to be unconstitutional and dropped the charge against him.

Chief Justice succession: Mtetwa enters fray

HARARE-Advocating the rule of law and defending the supremacy of the Constitution has been Beatrice Mtetwa's life work - and she is not about to stop.

In her latest bid, the human rights lawyer has filed an application in the Supreme Court seeking to be admitted as a friend of the court (*amicus curiae*) in the raging saga linked to the succession of outgoing Chief Justice Godfrey Chidyausiku.

The Judicial Service Commission (JSC) is contesting a decision by the High Court to stop it from its constitutional mandate to conduct interviews for the appointment of a new Chief Justice.

In a notice of application filed on Tuesday 31 January 2017, Mtetwa wants the Supreme Court to issue an order appointing her as "a friend of the court" in the matter.

A friend of the court is a person who is not a party to an ongoing case, has not been approached to be a party but applies to assist the court with information because of their expertise or interest in the matter.

It is the court's discretion to accept or reject the application for one to be a friend of the court.

The JSC is appealing against High Court Judge Justice Charles Hungwe's judgment that barred the JSC from conducting interviews that would lead to the appointment of a successor to Chief Justice Godfrey Chidyausiku, who retires at the end of this month.

Justice Hungwe's order followed an application filed by Romeo Taombera Zibani, a University of Zimbabwe student, seeking to stop public interviews pending a constitutional amendment that would allow the president to appoint the Chief Justice without the necessity of public interviews.

The JSC, which went ahead with the interviews after noting an appeal, is arguing against Justice Hungwe's ruling.

The JSC argues that an intention to amend the Constitution by the Executive cannot be used as a basis to stop an independent constitutional body from discharging its constitutional mandate.

Mtetwa is now seeking to intervene as a friend of the court.

If admitted as a friend of the court, Mtetwa said she would be able to file her heads of argument on or before 6 February 2017 in time for the Supreme Court to preside over the hearing of the JSC's appeal, which is reportedly set for later this month. The JSC appeal is set to be heard on 13 February.

In her founding affidavit, Mtetwa argues that Justice Hungwe's ruling granted last year has a severe impact on constitutional democracy as it threatens the supremacy of the Constitution.

"The Constitution... is to me what the Bible is to a Christian priest/pastor and the Koran to a Moslem religious leader," said Mtetwa, a senior member of Zimbabwe Lawyers for Human Rights.

She added: "It is therefore of utmost importance to ensure that all constitutional provisions, particularly where there are no allegations of any violations to scrupulously be observed as provided for in the Constitution. To do otherwise would lead to the absurdity where constitutional provisions can be suspended at a whim, which could render the Constitution and its provisions a worthless document."



Respect supremacy of Constitution...Beatrice Mtetwa

Mtetwa argued that the Constitution is the supreme law and it cannot be suspended by a court of law granting an interdict on the basis of an amendment yet to be passed.

She also contended that under section 2 (2) of the Constitution, the obligations imposed by the Constitution are binding "on every person, natural or juristic, including the state and all executive, legislative and judicial institutions and agencies of government at every level and must be fulfilled by them."

"A court of law has no basis to interdict a lawful constitutional process being undertaken by a constitutional body given the responsibility by the Constitution. A court of law cannot find that a part of the Constitution is unconstitutional. Neither can it suspend its effect. Only a Constitution can internally limit the operation or effect of its own provisions," Mtetwa argued.

She cited Zibani, President Robert Mugabe, Vice-President and Justice, Legal and Parliamentary Affairs Minister Emmerson Mnangagwa, Chief Justice Godfrey Chidyausiku, Deputy Chief Justice Luke Malaba, Justice Rita Makarau, Justice Paddington Garwe and Judge President George Chiweshe as respondents in the application.

In his application granted by Justice Hungwe, Zibani also argued that some of the candidates for the Chief Justice position were senior members of the JSC, the same body conducting the interviews.

But Mtetwa said Zibani's application was based on "his imagination" and "mere opinion" devoid of facts.

Currently, the President should appoint the Chief Justice from a shortlist of three candidates recommended by the JSC following public interviews. The constitutional amendment, which is still before Parliament, would do away with the JSC interviews, giving the president sweeping powers to unilaterally appoint the Chief Justice.

Section 180 of the Constitution of Zimbabwe: Appointment of judges

1. The Chief Justice, the Deputy Chief Justice, the Judge President of the High Court and all other judges are appointed by the President in accordance with this section.
2. Whenever it is necessary to appoint a judge,



Outgoing...Chief Justice Godfrey Chidyausiku.

the Judicial Service Commission must -

- a. advertise the position;
- b. invite the President and the public to make nominations;
- c. conduct public interviews of prospective candidates;
- d. prepare a list of three qualified persons as nominees for the office; and
- e. submit the list to the President; whereupon, subject to subsection (3), the President must appoint one of the nominees to the office concerned.

3. If the President considers that none of the persons on the list submitted to him in terms of subsection (2)(e) are suitable for appointment to the office, he or she must require the Judicial Service Commission to submit a further list of three qualified persons, whereupon the President must appoint one of the nominees to the office concerned.

Section 164 of the Constitution of Zimbabwe: Independence of judiciary

1. The courts are independent and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice.
2. The independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance, and therefore -
 - a. neither the State nor any institution or agency of the government at any level, and no other person, may interfere with the functioning of the courts;
 - b. the State, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness and to ensure that they comply with the principles set out in section 165.
3. An order or decision of a court binds the State and all persons and governmental institutions and agencies to which it applies, and must be obeyed by them.

4. Nothing in this section is to be construed as preventing an Act of Parliament from vesting functions other than adjudicating functions in a member of the judiciary, provided that the exercise of those functions does not compromise the independence of the judicial officer concerned in the performance of his or her judicial functions and does not compromise the independence of the judiciary in general.

Section 235 of the Constitution of Zimbabwe: Independence of Commissions

1. The independent Commissions -
 - a. are independent and are not subject to the direction or control of anyone;
 - b. must act in accordance with this Constitution; and
 - c. must exercise their functions without fear, favour or prejudice; although they are accountable to Parliament for the efficient performance of their functions.
2. The State and all institutions and agencies of government at every level, through legislative and other measures, must assist the independent Commissions and must protect their independence, impartiality, integrity and effectiveness.
3. No person may interfere with the functioning of the independent Commissions.

Section 2 of the Constitution of Zimbabwe: Supremacy of Constitution

1. This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.
2. The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.