

HELD AT HARARE

In the matter between:

NELSON CHAMISA

and

EMMERSON DAMBUDZO MNANGWAGWA

JOSEPH BUSHA

MELBAH DZAPASI

NKOSANA MOYO

NOAH MANYIKA

PETER WILSON

TAURAI MTEKI

THOKOZANI KHUPE

DIVINE MHAMBI

LOVEMORE MADHUKU

PETER MUNYANDURI

AMBROSE MUTINHIRI

TIMOTHY JOHANNES CHIGUVARE

JOICE MUJURU

KWANELE HLABANGANA

EVARISTO CHIKANGA

DANIEL SHUMBA

VIOLET MARIYACHA

BLESSING KASIYAMHURU

ELTON MANGOMA

PETER GAVA

WILLIAM MUGADZA

ZIMBABWE ELECTORAL COMMISSION

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

THE CHIEF ELECTIONS OFFICER

APPLICANT

1ST RESPONDENT2ND RESPONDENT3RD RESPONDENT4TH RESPONDENT5TH RESPONDENT6TH RESPONDENT7TH RESPONDENT8TH RESPONDENT9TH RESPONDENT10TH RESPONDENT11TH RESPONDENT12TH RESPONDENT13TH RESPONDENT14TH RESPONDENT15TH RESPONDENT16TH RESPONDENT17TH RESPONDENT18TH RESPONDENT19TH RESPONDENT20TH RESPONDENT21ST RESPONDENT22ND RESPONDENT23RD RESPONDENT24TH RESPONDENT25TH RESPONDENT

COURT APPLICATION

ATHERSTONE & COOK

Applicant's Legal Practitioners

Praetor House

119 Josiah Chinamano Avenue/4th Street**HARARE** (Mr. Chagonda)

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WILLIAM MUGADZA

22ND RESPONDENT

ZIMBABWE ELECTORAL COMMISSION

23RD RESPONDENT

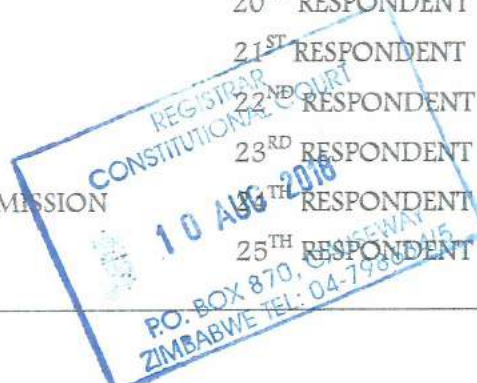
THE CHAIRPERSON OF THE ELECTORAL COMMISSION

24TH RESPONDENT

THE CHIEF ELECTIONS OFFICER

25TH RESPONDENT

COURT APPLICATION INDEX



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Elections Officer Date-stamped

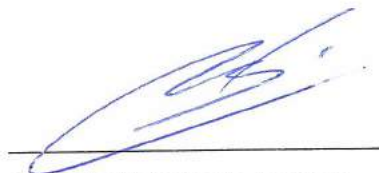
13 July 2018

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44. **Draft Order**

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DATED at HARARE this 10th day of AUGUST 2018



ATHERSTONE & COOK

Applicant's Legal Practitioners

Praetor House

119 Josiah Chinamano Avenue/4th Street

HARARE (Mr. Chagonda)

To: **THE REGISTRAR**
Constitutional Court of Zimbabwe
Cnr. 3rd Str/ S. Machel Avenue
HARARE

AND TO: **The Respondents as set out in the Attached Addresses
Schedule**

IN THE CONSTITUTIONAL COURT OF ZIMBABWE

CASE NO CCZ____/18

HELD AT HARARE

In the matter between:

NELSON CHAMISA

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And

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2ND RESPONDENT

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21ST RESPONDENT

And

WILLIAM TAWONEZVI MUGADZA

22ND RESPONDENT

And

ZIMBABWE ELECTORAL COMMISSION

23RD RESPONDENT

And

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

24TH RESPONDENT

And

THE CHIEF EXECUTIVE OFFICER

OF THE ELECTORAL COMMISSION

25TH RESPONDENT

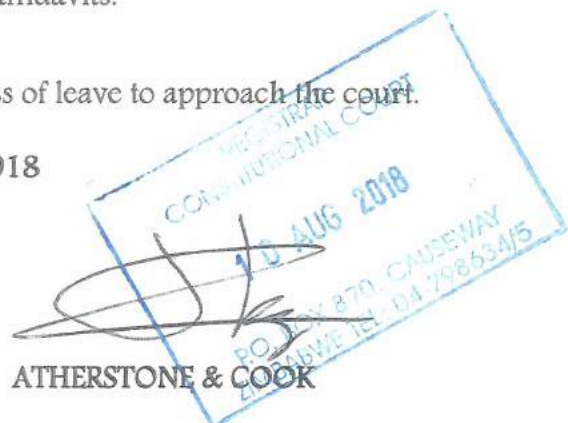
APPLICATION IN TERMS OF SECTION 93(1) OF THE CONSTITUTION OF
ZIMBABWE, 2013 FILED PURSUANT TO RULE 23 OF THE CONSTITUTIONAL
COURT RULES SI 61 OF 2006

TAKE NOTICE that the applicant intends to apply to the Constitutional Court for the Order in terms of the Draft Order annexed to this notice and that the accompanying Affidavits and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition in Form CCZ 2, together with one or more opposing affidavits with the Registrar of the Constitutional Court at Harare within 3 days after the date on which this notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavits on the applicant at the address for service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.

There is no need for an order granting direct access of leave to approach the court.

DATED AT HARARE THIS 1ST DAY OF AUGUST 2018



ATHERSTONE & COOK

Applicants' Legal Practitioners

119 J. Chinamano Avenue

HARARE (Mr Chagonda)

AND TO

THE REGISTRAR

Constitutional Court of Zimbabwe

HARARE

AND TO

THE RESPONDENTS AS SET OUT IN THE ATTACHED NOTICE

HARARE

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WILLIAM MUGADZA

22ND RESPONDENT

ZIMBABWE ELECTORAL COMMISSION

23RD RESPONDENT

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

24TH RESPONDENT

THE CHIEF ELECTIONS OFFICER

25TH RESPONDENT

RESPONDENTS' ADDRESSES SCHEDULE

EMMERSON DAMBUDZO MNANGAGWA
1st Respondent
Munhumutapa Building
Cnr. 3rd Street/ Samora Machel Avenue
HARARE

MELBAH DZAPASI
3rd Respondent
#1980 Freedom Movement Zimbabwe
HARARE

NOAH NGONI MANYIKA
5th Respondent
Building Zimbabwe Alliance
HARARE

BRYN TAURAI MTEKI
7th Respondent
Independent
HARARE

DIVINE MHAMBI-HOVE
9th Respondent
National Alliance of Patriotic and Democratic
HARARE

TENDAI PETER MUNYANDURI
11th Respondent
New Patriotic Front
HARARE

AMBROSE MUTINHIRI
12th Respondent
National Patriotic Front
Newton Farm
MARONDERA

JOICE TEURAI ROPA MUJURU
14th Respondent
People's Rainbow Coalition
HARARE

EVARISTO WASHINGTON CHIKANGA
16th Respondent
Rebuild Zimbabwe
HARARE

JOSEPH BUSHA
2nd Respondent
FreeZim Congress.
HARARE

NKOSANA DONALD MOYO
4th Respondent
Alliance for the People's Agenda
HARARE

PETER HARRY WILSON
6th Respondent
Democratic Opposition Party
HARARE

THOKOZANI KHUPE
8th Respondent
Movement for Democratic Change-T
HARARE

LOVEMORE MADHUKU
10th Respondent
National Constitutional Assembly
348 Herbert Chitepo Avenue
HARARE

TIMOTHY J. TONDERAI MAPFUMO CHIGUVARE
13th Respondent
People's Progressive Party Zimbabwe
HARARE

KWANELE HLABANGANA
15th Respondent
Republican Party of Zimbabwe
HARARE

DANIEL KUZOVIRAVA SHUMBA
17th Respondent
United Democratic Alliance
HARARE

VIOLET MARIYACHA

18th Respondent
United Democracy Movement
HARARE

BLESSING KASIYAMHURU

19th Respondent
Zimbabwe Partnership for Prosperity
HARARE

ELTON STEERS MANGOMA

20th Respondent
Coalition of Democrats
Cnr. 3rd Street/ Kwame Nkrumah Avenue
HARARE

PETER MAPFUMO GAVA

21st Respondent
United Democratic Front
HARARE

WILLIAM TAWONEZVI MUGADZA

22nd Respondent
Bethel Christian Party
HARARE

ZIMBABWE ELECTORAL COMMISSION

23rd Respondent
Mahachi Quantum Complex
1 Nelson Mandela Avenue
Corner Kaguvi St. & Jason Moyo Ave
HARARE

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

24th Respondent
Mahachi Quantum Complex
1 Nelson Mandela Avenue
Corner Kaguvi St. & Jason Moyo Ave
HARARE

THE CHIEF ELECTIONS OFFICER

25TH Respondent
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BLESSING KASIYAMHURU

ELTON MANGOMA

PETER GAVA

WILLIAM MUGADZA

ZIMBABWE ELECTORAL COMMISSION

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

THE CHIEF ELECTIONS OFFICER

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

6TH RESPONDENT

7TH RESPONDENT

8TH RESPONDENT

9TH RESPONDENT

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16TH RESPONDENT

17TH RESPONDENT

18TH RESPONDENT

19TH RESPONDENT

20TH RESPONDENT

21ST RESPONDENT

22ND RESPONDENT

23RD RESPONDENT

24TH RESPONDENT

25TH RESPONDENT

ADDRESS FOR SERVICE

TAKE NOTICE THAT the Applicant's address of service is:

c/o. **ATHERSTONE & COOK**
 Praetor House
 119 J. Chinamano Avenue
 Cnr. 4th Str/ J. Chinamano Avenue
HARARE (Mr. Chagonda)

Dated at HARARE this day of AUGUST 2018



ATHERSTONE & COOK
 Applicant's Legal Practitioners
 Praetor House
 119 Josiah Chinamano Avenue/4th Street
HARARE (Mr. Chagonda)

To: **THE REGISTRAR**
 Constitutional Court of Zimbabwe
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DIVINE MHAMBI-HOVE

9TH RESPONDENT

And

LOVEMORE MADHUKU

10TH RESPONDENT

And

| | |
|-------------------------------|-----------------------------|
| TENDAI PETER MUNYANDURI | 11 TH RESPONDENT |
| And | |
| AMBROSE MUTINHIRI | 12 TH RESPONDENT |
| And | |
| TIMOTHY JOHANNES CHIGUVARE | 13 TH RESPONDENT |
| And | |
| JOICE TEURAI ROPA MUJURU | 14 TH RESPONDENT |
| And | |
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| And | |
| ELTON STEERS MANGOMA | 20 TH RESPONDENT |
| And | |
| PETER MAPFUMO GAVA | 21 ST RESPONDENT |
| And | |
| WILLIAM TAWONEZVI MUGADZA | 22 ND RESPONDENT |
| And | |
| ZIMBABWE ELECTORAL COMMISSION | 23 RD RESPONDENT |

And

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

24TH RESPONDENT

And

THE CHIEF ELECTIONS OFFICER

OF THE ELECTORAL COMMISSION

25TH RESPONDENT

founding affidavit

(a) The deposition

I NELSON CHAMISA make oath and state as follows;

- 1.1 I am an adult male Zimbabwean and an applicant in this matter. I was the MDC Alliance presidential candidate in the recently held presidential elections. I depose to the facts of this matter in my personal capacity and my deposition is true and correct. Where I relate to legal matters, I rely on the advice of counsel and my entire legal team. Where I relate to information that was relayed to me by my Agents I have by personal inquiry verified the authenticity thereof.

(b) The respondents

- 1.2 First respondent is EMMERSON DAMBUDZO MNANGAGWA an adult male Zimbabwean and the current president of the Republic of Zimbabwe. First respondent participated in the just ended elections as a presidential candidate and was declared the winner by the twenty fourth respondent. His return is in issue.
- 1.3 Second respondent is JOSEPH BUSHA an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 1.4 Third respondent is MELBAH DZAPASI an adult female Zimbabwean who too participated in the just ended elections as a presidential candidate.
- 1.5 Fourth respondent is NKOSANA DONALD MOYO an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 1.6 Fifth respondent is NOAH NGONI MANYIKA an adult male Zimbabwean who participated in the just ended elections as a presidential candidate.
- 1.7 Sixth respondent is PETER HARRY WILSON an adult male Zimbabwean who participated in the just ended elections as a presidential candidate.

- 1.8 Seventh respondent is BRYN TAURAI MTEKI an adult male Zimbabwean who too participated in the just ended elections as a presidential candidate.
- 1.9 Eighth respondent is THOKOZANI KHUPE an adult female Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.1 Ninth respondent is DIVINE MHAMBI-HOVE an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.2 Tenth respondent is LOVEMORE MADHUKU an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.3 Eleventh respondent is TENDAI PETER MUNYANDURI an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.4 Twelfth respondent is AMBROSE MUTINHURI an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.5 Thirteenth respondent is TIMOTHY JOHANNES CHIGUVARE an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.6 Fourteenth respondent is JOICE TEURAI ROPA MUJURU an adult female Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.7 Fifteenth respondent is KWANELE HLABANGANA an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.8 Sixteenth respondent is EVARISTO WASHINGTON CHIKANGA an adult female Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 2.9 Seventeenth respondent is DANIEL KUZOVIRAVA SHUMBA an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 3.1 Eighteenth respondent is VIOLET MARIYACHA an adult female Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 3.2 Nineteenth respondent is BLESSING KASIYAMHURU an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.

- 3.3 Twentieth respondent is **ELTON STEERS MANGOMA** an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 3.4 Twenty first respondent is **PETER MAPFUMO GAVA** an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 3.5 Twenty second respondent is **WILLIAM TAWONEZVI MUGADZA** an adult male Zimbabwean who also participated in the just ended elections as a presidential candidate.
- 3.6 Twenty third respondent is the **ZIMBABWE ELECTORAL COMMISSION** a constitutional commission tasked with overseeing the conduct of elections in Zimbabwe.
- 3.6.1 Twenty fourth respondent is the **CHAIRPERSON OF THE ELECTORAL COMMISSION** who is cited in her official capacity. She is cited because her actions in her official capacity are in issue.
- 3.6.2 Twenty fifth respondent is the **CHIEF ELECTIONS OFFICER OF THE ELECTORAL COMMISSION**. He is cited because the relief sought requires his execution.
- 3.7 The addresses for service for all the respondents appear in the notice attached hereto.

(c) Nature of the application

- 3.8 This application challenges the results of the presidential election announced irregularly by the 23rd and 24th respondents on the 3rd day of August 2018. It also challenges the declaration by the twenty third respondent that first respondent is the duly elected presidential candidate for the presidential election that took place on the 30th of July 2018.
- 3.9 I will in this application place reliance on the affidavits of **MORGEN KOMICHI** and **JAMESON TIMBA** which are attached hereto. The gentlemen were my Presidential and Chief Election Agents respectively. I will also place reliance on some other supporting affidavits, reports, videos and photographs. I will have two bundles of evidence. the first relates to the documents attached to this affidavit. The second relates to a bundle, separately bound but filed herewith.
- 4.1 My challenge to both the result of the election and the declaration of first respondent as the winner is primarily based on procedural and

statistical/mathematical grounds. I will however, and for purposes of completeness, relate to certain background issues which have a material bearing on the application particularly in so far as the conduct of the twenty third respondent is concerned. That background is also called in aid as a subsidiary basis for the challenge.

(d) Background issues

4.2 The background to this challenge is set out below.

4.3 As already indicated, I contested for the office of the President of Zimbabwe in the recently concluded elections. In the run up to the elections, twenty third respondent involved itself in a litany of constitutional and electoral law violations all of which had the effect of undermining the just conduct of the elections. Loud protests against those violations went unheeded with twenty third respondent taking an attitude which vacillated between arrogance and obduracy. In all that, twenty third respondent took positions which were biased in favour of the first respondent. At the end of the day, it was clear that twenty third respondent had no intention of conducting a proper election. In the event, it did not.

4.4 It is important that I relate to those violations since they show that no proper election was conducted. The main basis upon which I impugn the election result announced and the declaration of first respondent as the President will however, be dealt with separately. For the avoidance of doubt, these background issues are also part of the substantive challenge. The evidence to these background issues is contained in the separately bound volume of evidence which I will call "123 series".

CONSTITUTIONAL LAW BREACHES

i. Lack of Independence of the Zimbabwe Electoral Commission

4.5 An independent Electoral Commission goes to the very heart of a free, fair and credible election. The twenty third respondent clearly lacked independence and the situation was not helped by the conduct of its chair which is articulated below. The lack of independence, transparency and accountability was meant to and did benefit first respondent. Not only were blatant violations committed by the twenty third respondent but it also turned a blind eye to those which it should have condemned.

ii. Failure of State owned media of communication to comply with Section 61(4)

4.5.1 The constitution requires the state media to be impartial and objective. This was not so with the ZBC, The Herald and The Chronicle and yet not once did the twenty third respondent speak about the violations. The ZBC, which is a State owned broadcaster created by Statute, was a propaganda arm of first respondent and brazenly breached section 61(4) of the Constitution for the entire duration of the Election Campaign. The relevant footage will be played in court and the relevant newspapers placed before it.

4.5.2 Furthermore the Herald and the Chronicle, directly State owned media of communication, were likewise in breach of this provision. Given that there are no other television stations in the country and that the Herald by its own admission is the largest circulation daily in the nation this was a serious breach of the Constitution which also went to the heart of the election. It should also be pointed out that well over 60% of the electorate in the rural areas only receive their information from the ZBC so this breach had, likewise, a profound effect on the electorate's outlook and their ability to understand the divergent views and dissenting opinions offered by parties and candidates other than ZANU PF and first respondent.

4.5.3 The conduct of the public broadcasters articulated above is also in breach of the Electoral Act. ZEC was obliged to call the public broadcasters to order over these violations but refused to do so. The failure by ZEC to ensure that there was an impartial and fair coverage of the election goes to the root of the election, particularly when regard is had to the relevant constitutional provisions.

iii. Conduct of traditional leaders and rogue security elements

4.5.4 There is a substantial body of evidence which shows that traditional leaders were involved in the electoral process as polling agents on behalf of the first respondent. For instance an Alexandra Mujayi a village head was a polling agent and Oliver Mafungo was also a polling agent.

4.5.5 There were also rogue elements who identified themselves as being from the security sector who went about campaigning and threatening villagers. Sadly this conduct was not condemned.

ELECTORAL ACT BREACHES

4.5.6 For the sake of convenience, the Act will be considered sequentially.

i. General principles affecting conduct of elections

- 4.5.7 Section 3 (a) of the Electoral Act states that elections are to be conducted “freely, fairly and transparently. Section 3 (c) (v) states that every political party has the right to have “reasonable access to all material and information for it to participate in every election”.
- 4.5.8 During the election campaign two events happened which demonstrate the unfairness of ZEC in favour of ZANU PF/Mnangagwa and which were prejudicial to my interests.
- 4.5.9 It is common cause that Mnangagwa obtained access to the unique combination of voters’ ward details and cellphone numbers. The SMS’s were sent out to voters’ cellphones encouraging them to vote for ZANU PF. When challenged about this ZANU PF said that they had got this data from their own sources from people who had indicated an interest in supporting ZANU PF. There were numerous reports at the time by people in response to that stating that they had never given such information to ZANU PF nor had they ever expressed any interest in supporting ZANU PF. Others pointed out that their addresses had only changed recently and that the only organization which had their addresses were ZEC. Cellphone service providers denied that they had given out the information to ZANU PF or anyone else for that matter. In other words the only possible source with the unique combination of ward details and cellphone numbers could have come from was ZEC. All voters who registered were required to give their current address and their cellphone numbers to ZEC who held that information. It is apparent from this that ZEC released that information to ZANU PF unfairly and in a discriminatory fashion in favour of ZANU PF and Mnangagwa. There are court records on this issue which will be placed before the court.
- 4.5.10 In direct contrast to this I requested the full BVR version of the Voter’s Roll generated in terms of Section 20 (2) of the Act as read with section 9 of the Electoral (Voter Registration) Regulations SI 85/2017 but my request was turned down for no apparent reason.

ii. ZEC’s responsibility to compile voter’s rolls

- 4.5.11 Section 18 of the Act gives ZEC the responsibility to register voters who are qualified to register and to vote in terms of section 1 of the Fourth Schedule of the

Constitution of Zimbabwe. It is trite and common cause that only voters who are eligible should be registered and that no duplicate entries are allowed by law.

4.5.12 It is also common cause that the voter registration exercise was done in the course of the few months leading up to the calling of the election, in other words was done recently and one would expect that all the details would be up to date. A variety of audits of the voters roll prepared by ZEC were done. The audits conducted show that 11% of voters could not be found, which, when extrapolated, amounts to some 625 000 voters. In other audits done by civic organizations the voters roll was found to have serious discrepancies including duplicate voters, false I.D. numbers and false surnames. The reports form part of the separate bundle.

4.5.13 The conduct of ZEC was in breach of the law in that it registered people who were ineligible to be on the roll.

iii. Wearing of partisan clothing

4.5.14 It is common cause that the Chairperson of ZEC, Judge Priscilla Chigumba was appointed by first respondent on the 1st February 2018. On or about the 5th February 2018 Judge Chigumba was given and allowed herself to be photographed in regalia which was used by one of the candidates in the election Emmerson Mnangagwa. The scarf was used in all first respondent's promotional material and became symbolic of his campaign. Judge Chigumba was accordingly guilty of wearing an article of clothing associated with a candidate in breach of the law.

4.5.15 The conduct of the Chairperson of the twenty third respondent makes it clear that the umpire in this election had decided to pitch camp with one of the contestants. Such conduct is with respect unforgivable. It is that kind of conduct which explains the many irregularities that are related to in this affidavit.

iv. Failure to provide a complete Voter's Roll

4.5.16 Section 20(2)(c) of the Electoral Act states that "Voter's Rolls shall specify that such other information as may be prescribed or as the Commissioner considers appropriate". The voters roll supplied to me did not contain any biometric data on it, such as photographs and fingerprints. Section 9(c) of the Electoral (Voter Registration) Regulation SI 85/2017 states that the voter's photographs" is to be

included in the voters poll. This information was not supplied to me. No explanation for the failure to supply the information exists.

It does not help matters that no biometric voter's roll was used during the actual poll neither was the voting itself biometric.

v. Voter Education

4.5.17 The function to provide unbiased voter education is that of the commission. It is common cause that ZANU PF asked for permission to use sample ballot papers to engage in its own voter education process. ZEC Commissioner Dr Qhubani Moyo issued a statement that ZANU PF made this request which permission was denied by ZEC to ZANU PF.

4.5.18 It is however, common cause that on Thursday the 26th July and Friday the 27th 2018 several ZANU PF candidate MPs were found in possession of reams of sample presidential ballot papers which ZANU PF had printed and packaged and distributed to its candidate MPs in breach of the law. The relevant evidence forms part of the bundle of evidence. ZEC did nothing by way of dealing with these violations.

4.5.19 There is however, no assurance that the material related to above was simply educational material. The use of such material provided fertile ground for rigging through ballot swapping and stuffing.

vi. Alphabetical order of surnames on ballots

4.5.20 The ballot paper designed by ZEC was designed in breach of the law and in a manner meant to benefit first respondent. Section 57 (a) states that every ballot paper shall be "in the form prescribed" and in terms of Section 57 (a) (i) the names "of all the duly named candidates" are to be in "alphabetical order of surnames".

4.5.21 In terms of the first schedule, Form V10, of the Electoral Regulations set out in Statutory Instrument 21/2005, updated on the 1st June 2018 – The Presidential Ballot Form – it is prescribed that the Presidential Ballot is to be on one page. In addition in terms of Section 3 (11) of the same regulations horizontal segments "shall equate to the number of candidates nominated for the election" and there shall be four vertical segments containing the names of the candidates, name of the party, the symbol of the party and passport sized photograph of the candidate.

4.5.22 It is common cause that ZEC produced a presidential ballot that was not on a single page with four vertical columns as described in the Act and Regulations but with some ten vertical columns and designed in such a way to give a preference to one candidate, namely Mnangagwa, in itself a breach of both the alphabetical order of the surnames required in terms of Section 57 (a) (i) of the Electoral Act and section 235 (1)(c) and 236 (1) of the Constitution which requires ZEC not to act without fear, favour or prejudice or to favour the interests of any political party or prejudice the interests of any other political party.

4.5.23 The breach of the law in this regard was meant to afford first respondent a material advantage and also speaks to the lack of impartiality of the umpire.

vii. Fixing of polling station returns on the outside of polling stations

4.5.24 Section 64(1) (c) states that presiding officers of polling stations are obliged to “affix a copy of the polling station return on the outside of the polling station so that it is visible to the public who wish to do so may inspect it and record its contents”.

4.5.25 This provision was however, only complied with at 79% of polling stations. In other words at 21% of polling stations presiding officers did not post polling station returns on the outside of polling stations. The relevant evidence of this violation forms part of the bundle of evidence.

4.5.26 This irregularity was meant to and did assist in twenty third respondent rigging the election on behalf of the first respondent. The materiality of the irregularity is stark.

viii. Postal Ballots

4.5.27 Section 73 (2)(b)(ii) states that a member of the disciplined forces may apply for a postal ballot but such application can be sent as part of a batch by the Commanding Officer on behalf of that member of a disciplined force.

4.5.28 In terms of section 74(3) once an application for a postal ballot has been received by the Chief Elections Officer and approved The Chief Elections Officer of ZEC shall deliver it to “the nearest post office and dispatched by registered post” or “a commercial courier for delivery to the applicant”. Accordingly this section mandates that all postal ballots are to be addressed individually to the applicants as members of the disciplined forces, not to that applicants’ Commanding Officer or his station.

4.5.29 Section 75 of the Act states that once the postal ballot has been received by the member of the disciplined forces, that member has the right in terms of section 75 (1)(a) to vote secretly and then, in terms of section 75(1)(d), to "dispatch the covering envelope by registered post or by a commercial courier service, back to the Chief Elections Officer." In other words, a postal ballot is to be dealt with secretly by the member of the disciplined forces at a time and place of his or her choosing and then posted back to ZEC by such member of the disciplined forces.

4.5.30 It is common cause that members of the Police were summoned by their Commanding Officers and ordered to vote collectively and to place their ballots in boxes which would then be returned collectively by such Commanding Officers to ZEC. The evidence of that malpractice is in the bundle of evidence. ZEC breached the law by posting the postal ballots, not to the individual applicants, but to their Commanding Officers in batches. This was done throughout the country. Approximately 7 500 ballots were processed in this manner.

4.5.31 The effect is to invalidate the entire postal vote.

ix. Counting of Presidential Ballots

4.5.32 The manner in which the collation and verification of the presidential results was done at the National Command Centre was in breach of statute. It is common cause that my agents were not notified of the date and place of verification, were not given an opportunity to make notes of the contents of each constituency return and were not present when the number of votes in each constituency return was counted.

4.5.33 Indeed the entire process of collating, verifying and counting the presidential ballots was done under a cloud of secrecy.

x. Undue influence, threats to voters, injury, damage, harm or loss

4.5.34 Section 134 (1) of the Electoral Act prohibits people from making use of threats or threatening any "injury, damage, harm or loss". Throughout the campaign both soldiers and ZANU PF operatives threatened rural inhabitants with injury or the loss of their landholdings or the loss of food aid if they and their communities did not vote for Mnangagwa and ZANU PF. The evidence of such threats is part of the bundle.

4.5.35 Despite widespread reports of such threats being made ZEC took no action to speak out against it, to investigate the same or to report the same to the ZRP for prosecution. There is accordingly no assurance that people in the rural areas cast their votes freely and voluntarily. What compounds this is the soft violence perpetrated through SMS messages in terms of which people were effectively told that the president knew and was watching them.

xi. Bribery , provision of seeds and fertiliser packs

4.5.36 Section 136 (1) (c) makes it an offence for any person who, directly or indirectly, by himself or herself or by any other person makes "any gift" to any person in order "to induce such person to procure the return of a candidate in the election or the vote of a voter at an election".

4.5.37 It is common cause that in the weeks prior to the election Mnangagwa and ZANU PF candidates systematically distributed seed packs and fertilizer, purchased using public monies, to rural communities to induce them to vote for Mnangagwa and ZANU PF candidates.

4.5.38 Notwithstanding the fact that these practices were widespread and well reported and ZEC failed to take any action to prevent such practices or to report the breaches to the ZRP for the prosecution of those responsible for such practices.

4.5.39 All these violations affect with respect the credibility of the election under challenge and have the effect of invalidating it.

LEGITIMACY

4.4.40 As a participant in the electoral process, I am aware that the most critical output of an election is legitimacy of government and that this legitimacy is based upon consent. It is from consent of the electorate that government acquires authority and legitimacy. Indeed, our Constitution, the supreme law of the country codifies this principle in various provisions where it is reiterated that authority to govern derives from the people.

4.4.41 For this reason, the process by which this consent is given, that is, the election, must be conducted in a free, fair, transparent and credible way. I am advised and believe that adherence to and fulfilment of electoral procedures as provided for by law is critical to the legitimacy of the election and its outcome. I am also advised and believe this confers a type of legitimacy known as procedural legitimacy.

4.4.42 For reasons that are outlined herein, the twenty third respondent has failed and/or refused to adhere to or follow all the procedures as required by law or at any rate conducted itself in a fair, impartial and transparent manner. This conduct undermines the foundations of procedural legitimacy which is critical to the proper realisation of consent which is necessary for overall input legitimacy. These failures by twenty third respondent must be viewed not as singular failings but in aggregate form so that the totality of their effect is to severely undermine the legitimacy of the election, including its outcome.

4.4.43 The breaches accordingly yield the invalidity of the election. Such an invalid election cannot confer either political or legal legitimacy. The people of Zimbabwe deserve a clean and credible process. They only have one chance in five years.

(e) The main challenge

4.6 At the close of polling at or around 19.00hrs on the 30th of July 2018, sample results from all over the country in the form of completed v11 forms were released and were all over social media. I attach the relevant v11 forms and mark them the "A series" Those results showed that I was well ahead of the first respondent in all provinces of the country. The results were released from around 20.00hrs to 01.00hrs.

4.7 After it became apparent that first respondent was in a state of deep bother, twenty third respondent immediately stopped the counting in many polling stations and the completion of the necessary returns. The polling station returns v11 forms were not completed until the next day on the 31st of July 2018 when they once again started trickling at or around midday.

4.8 On the 31st of July 2018 ZEC started announcing the results of the parliamentary elections. For some strange reasons, no results from the cities were announced although one would have thought that ZEC had access to those first. Indeed, the last results to be announced were from Harare where the National Command Centre is stationed. This was deliberate and calculated on the part of the twenty third respondent. Twenty third respondent is under no statutory obligation to manage the manner in which results are announced. The conduct of the twenty third respondent was hardly surprising given the violations set out above and the attitude exhibited by it whenever issues of concern were raised.

- 4.9 Another day then passed by without the presidential results being announced. That was of concern. At the close of polling, it is the presidential ballots which are counted and accounted for first. In addition, our system is constituency based so in effect, twenty third respondent had two hundred and ten results to announce.
- 5.1 On the 1st of August 2018 twenty third respondent started what it called a verification process and which it asked Messrs Komichi and Timba to witness. The process involved a group of people, in excess of twenty, punching in what was identified as v11 data into an excel spreadsheet. For close to two days that process continued. I defer to the affidavits of the two gentlemen which explain the manner in which that process was being conducted.
- 5.2 I was also aware that twenty third respondent had received, as it should do, results from all the polling stations in real time and stored them into its sever.
- 5.3 Given the unexplained delays, I despatched the head of my legal team to the National Command Centre with instructions to request access to the sever. Confirmation was made with ZEC (twenty third respondent) officials that the sever did exist. Indeed it does exist. A letter was written making the request for my team to access the sever. The letter is attached hereto and marked as "B" and its contents are fully prayed in aid.
- 5.4 That letter has still not been responded to by ZEC to this very day. There is obviously a reason ZEC will not respond to the letter much as there is a reason, they will not allow us access to the sever.
- 5.5 In the meantime the punching in of the v11 data at the National Command Centre ended. This was at or around 21:00 P.M on the 2nd of August 2018. It is at that stage that the verification process was supposed to start. We were to verify.
- a. The details of the constituency returns, v23b forms and see how they compared to the details on the excel spreadsheet.
 - b. What had been punched into excel and see how it compared to the v11 forms that we all had.
 - c. The tally yielded by the process which ZEC had preferred and how that total compared to what we had.