

**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE**

CASE NO CCZ____/18

In the matter between:

NELSON CHAMISA

Applicant

and

EMMERSON DAMBUDZO MNANGAGWA

First Respondent

JOSEPH BUUSHA

Second Respondent

MELBAH DZAPASI

Third Respondent

NKOSANA MOYO

Fourth Respondent

NOAH MANYIKA

Fifth Respondent

PETER WILSON

Sixth Respondent

TAURAI MTEKI

Seventh Respondent

THOKOZANI KHUPE

Eighth Respondent

DIVINE MHAMBI

Ninth Respondent

LOVEMORE MADHUKU

Tenth Respondent

PETER MUNYANDURI

Eleventh Respondent

AMBROSE MUTINHIRI

Twelfth Respondent

TIMOTHY JOHANNES CHIGUVARE

Thirteenth Respondent

JOICE MUJURU

Fourteenth Respondent

KWANELE HLABANGANA

Fifteenth Respondent

EVARISTO CHIKANGA

Sixteenth Respondent

DANIEL SHUMBA

Seventeenth Respondent

VIOLET MARIYACHA

Eighteenth Respondent

BLESSING KASIYAMHURU

Nineteenth Respondent

ELTON MANGOMA

Twentieth Respondent

PETER GAVA

Twenty-First Respondent

WILLIAM MUGADZA

Twenty-Second Respondent

ZIMBABWE ELECTORAL COMMISSION

Twenty-Third Respondent

THE CHAIRPERSON OF THE ELECTORAL COMMISSION

Twenty-Fourth Respondent

THE CHIEF EXECUTIVE OFFICER

OF THE ELECTORAL COMMISSION

Twenty-Fifth Respondent

FIFTH RESPONDENT'S AFFIDAVIT

I, the undersigned,

NOAH MANYIKA

state under oath as follows:

- 1 I am an adult male Zimbabwean and the fifth respondent in this matter. I was a candidate in the recent presidential elections, standing for the Build Zimbabwe Alliance.
- 2 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are both true and correct. Where I make reference to the law, I do so on the advice of my legal team.
- 3 I have read the application submitted by the applicant, Mr Nelson Chamisa, together with the supporting affidavits.

INTRODUCTION

- 4 While I am cited as a respondent, I support Mr Chamisa's application to invalidate the recent presidential elections. The purpose of this affidavit is briefly to set out the basis for my support of this application.
- 5 Given the short time frames for this election petition, I do not seek to introduce substantially new evidence at this stage of the proceedings. Instead, my contribution will primarily take the form of advancing legal submissions in support of the applicant, both in heads of argument and at the hearing. I will advance three propositions:
 - 5.1 First, the validity of a presidential election depends on whether it was free and fair at all stages of the process.
 - 5.2 Second, the presidential election was not free or fair on the basis that:

5.2.1 There is clear evidence that the Zimbabwe Electoral Commission manipulated the election results.

5.2.2 There was pattern of irregularities and unlawful conduct during the election campaign and on voting day.

5.3 Third, the just and appropriate remedy is to declare that the elections were not free and fair, to invalidate the presidential elections, and to order fresh elections. These fresh elections must be subject to a structural interdict to ensure that the ZEC delivers a truly free and fair presidential election on its second attempt.

6 In this affidavit, I will briefly outline the submissions of law which shall be advanced on my behalf by counsel. I do so on the advice of my legal counsel bearing in mind the urgency and importance of the case and in order to give advance notice of some of the contentions intended to be made on my behalf.

7 I address the following points in turn:

7.1 First, I set out the relevant factual background and my interest in this application;

7.2 Second, I address the applicable test for the validity of a presidential election;

7.3 Third, I summarise the evidence that the election results were manipulated;

7.4 Fourth, I show that these irregularities were consistent with the pattern of irregularities and unlawful conduct during the election campaign and on election day;

7.5 Finally, I briefly outline my intended submissions on the just and appropriate remedy.

BACKGROUND AND MY INTEREST IN THIS MATTER

8 In the early hours of Friday, 3 August 2018, the Zimbabwe Electoral Commission (ZEC) announced the results of the presidential elections, more than three days after the polls closed. The ZEC claimed that Mr Mnangagwa won the presidential election with 50,8% of the vote.

9 Mr Mnangagwa's 50,8% of the vote was just a fraction over the 50% + 1 threshold required to avoid a runoff election. That 0,8% margin amounts to **37,306** votes. The results published by the ZEC after the election, which differed from the announced results, reduced that margin to a mere **31,830** votes.

10 As the applicant's evidence has made clear, Mr Mnangagwa's narrow margin of victory was the product of systematic manipulation of the voting numbers by the ZEC. An analysis of the available voting data shows irregularities in the ZEC's own calculations. This manipulation of the voting results was the continuation of a pattern of irregularities that occurred before, during, and after election day.

11 These irregularities denied Zimbabweans their right to free and fair elections. The election stands to be invalidated on that ground alone.

12 These irregularities also materially affected the outcome. But for these irregularities, Mr Mnangagwa would have fallen far short of the 50%+1 threshold required to avoid a runoff election. That, too, provides a basis to invalidate the elections.

13 In the run-up to the elections, I repeatedly raised concerns over the manner in which the ZEC was managing the election process and the absence of a level playing field in the election campaign. By way of example:

- 13.1 I raised serious concerns over the integrity of the ZEC's ballot printing process, reflected in a letter delivered to the ZEC on 5 July 2018. I attach a copy marked **Annexure A**.
- 13.2 On 18 July 2018, I released a press statement expressing further concerns over the ZEC's failure to act fairly and impartially in the election campaign. In the course of the election campaign, the opposition parties raised serious concerns over the ZEC's conduct, including concerns over the integrity of the voters roll, the location of polling stations and the questionable postal voting process, among many others. The ZEC failed to offer any meaningful response to these concerns. I concluded that these objections were "*symptoms of a profound lack of trust in a body that is supposed to be impartial*" and indicated that "*the ZEC has little interest in transparency and the pursuit of a fair and level electoral playing field*". I attach a copy of this press release, marked **Annexure B**.
- 14 As a candidate in the presidential elections and as a Zimbabwean citizen, I have a constitutional right to free and fair elections. I stood as a candidate in these elections with the aim of building and entrenching democracy in Zimbabwe. The elections fell far short of that aim. Accordingly, I support this application both in my own capacity as a candidate and in the public interest.

THE RIGHT TO FREE AND FAIR ELECTIONS

- 15 The right to free and fair elections is a cornerstone of the Constitution.
- 16 The very first line of the Constitution commits Zimbabwe to “*the people*.” The right to free and fair elections is then entrenched as a founding value under section 3(2)(b), as a self-standing right under section 67(1), and as a guiding principle of the electoral system under section 155(1) of the Constitution.
- 17 Section 155(2) of the Constitution further provides that the “*[t]he State must take all appropriate measures, including legislative measures, to ensure that effect is given*” to the principles set out in section 151(1), including the right to free and fair elections.
- 18 It follows that the constitutionally mandated test for the validity of an election is whether the election was free and fair. This contemplates a two-part test:
- 18.1 First, were there irregularities in the election process?
- 18.2 Second, did these irregularities render the election unfree and unfair, at some or all stages of the election process?
- 19 I emphasise that it is not necessary for an applicant to prove that the results of the elections would have been different. It is sufficient to show that the election was not free and fair, at some or all stages of the process.
- 20 This test is supported by comparative law, specifically the jurisprudence of the South African Constitutional Court and the European Court of Human Rights. This comparative law will be addressed in detail in the heads of argument.

21 The Electoral Act appears to contemplate a different test for the validity of elections.

Section 177 provides as follows:

“177. When non-compliance with this Act invalidates election

An election shall be set aside by the Electoral Court by reason of any mistake or non-compliance with the provisions of this Act if, and only if, it appears to the Electoral Court that—

(a) the election was not conducted in accordance with the principles laid down in this Act; and

(b) such mistake or non-compliance did affect the result of the election.”

22 To the extent that this test differs from the constitutional test, it will be argued that the constitutional test takes precedence.

23 In any event, I submit that the irregularities in the 2018 presidential elections are so glaring that the elections fall to be invalidated irrespective of which test is applied. I now turn to address these irregularities.

DISCREPANCIES IN THE ELECTION RESULTS

24 The evidence presented by the applicant demonstrates clear irregularities and discrepancies in the election results published by the ZEC. These irregularities can be grouped into two categories:

24.1 Irregularities that appear from the ZEC's own published voting results;

24.2 Irregularities that are revealed by comparing the ZEC's published results with the results of individual polling stations and constituencies, captured in the V11 and V23a forms.

Irregularities in the ZEC's own results

25 The ZEC tallied the election results using Excel spreadsheets. The applicant has already noted that this is a highly insecure means of recording election results as the results can be altered with relative ease by any person.

26 The ZEC has subsequently published the results in the form of spreadsheets on its website and on compact disc. These results reflect no less than seven significant discrepancies that indicate the deliberate manipulation of results.

Discrepancy one: Difference between announced results and published results

27 The official results announced by the ZEC on 3 August 2018 differ markedly from the result that were subsequently published by the ZEC.¹ The ZEC has offered no public explanation for this discrepancy.

¹ See Annexure D, Record p 138.

- 28 The ZEC’s published results show that Mr Mnangagwa had **4,904** votes less than the announced results. In addition, the ZEC’s published results also reflected a higher number of votes cast, which further reduced Mr Mnangagwa’s percentage of the vote. The differences in Mr Mnangagwa’s results are reflected in the following table:

	Valid votes cast	Mr Mnangagwa's votes	% of votes	Votes over 50%+1 threshold
ZEC TV results	4,846,312	2,460,463	50.7698%	37,306
ZEC published results	4,847,457	2,455,559	50.6566%	31,830
DIFFERENCE	+1,145	-4,904	-0.1132	-5476.5

- 29 According to the ZEC’s published results, Mr Mnangagwa avoided a run-off by a mere **31,830** votes.

Discrepancy two: Double-counting of polling stations

- 30 An analysis of the ZEC’s published results demonstrates that several polling stations were double-counted in computing the results. The expert affidavit prepared by Dr Otumba Ouko provides several examples of double-counting of polling stations in the Rushinga and Mbire constituencies.² As a result of the double-counting, Mr Mnangagwa secured an additional **7,703** votes.
- 31 No doubt a deeper analysis of the ZEC’s calculations will reveal further examples of double-counting. However, the ZEC has now “password protected” the Excel spreadsheet containing the election results, which means that it is no longer possible to scrutinise the underlying calculations.

² Record pp 49 – 50.

Discrepancy three: Polling stations with identical results

- 32 The ZEC's published results show duplicated results for at least 28 pairs of polling stations (56 polling stations in total).
- 33 Of these polling stations, 8 pairs of polling stations (16 stations in total) registered virtually identical results across all 23 candidates in the presidential elections, including the identical number of total votes and spoiled ballots.
- 34 The applicant's expert, Dr Ouko, confirms that this type of duplication of voting results is statistically "near-to-impossible" and provides clear evidence of "tampering" by the ZEC to achieve the desired result.³
- 35 On my calculations, the polling stations with identical results accounted for at least 16,199 votes, which gave Mr Mnanagwa an additional **9,592** votes. I submit that these votes, which are a product of double-counting, must be disregarded and excluded from the votes obtained by Mr Mnanagwa.
- 36 The applicant has attached a list of these duplicate polling stations as Annexure G, however the spreadsheet appears to be missing some of the relevant data points. As a result, I have caused to be prepared a new spreadsheet, using the data taken directly from the ZEC's published results, which I attach marked **Annexure C**.

Discrepancy four: "Ghost" polling stations

- 37 As the applicant's affidavit also makes clear, there is evidence of "ghost polling stations" – polling stations that did not appear on any published list of polling stations before the election.

³ Record p 50.

38 Two examples of these ghost polling stations appear as 1HRDC and 4HRDC at Annexure M to the founding affidavit.⁴ These two polling stations alone accounted for a further **5,396** in favour of Mr Mhangagwa. These votes must also be disregarded. The votes cast here should be excluded from the total of the votes allocated to Mr Mhangagwa.

Discrepancy five: More votes than registered voters at polling stations

39 Section 20 of the Act requires the ZEC to keep and maintain a voters' roll for each polling station "containing the names of all registered voters who may vote in that area." Under section 56 of the Act, a voter "shall not be entitled to vote otherwise than at a polling station located in a ward for which he or she is registered as a voter on the ward's voters roll."

40 Taken together, these statutory provisions mean that the number of votes cast at a polling station cannot exceed the number of voters registered to vote at that station. In other words, there cannot be more votes than registered voters.

41 That is exactly what the ZEC's own data shows: for more than 100 polling stations, there were more votes cast than there were voters registered at those polling stations. This application includes a table with each of these polling stations.⁵ Some of the more glaring examples include:

41.1 The Dalny 1 Primary School polling station in the Chakari constituency: only 667 voters registered to vote, but 2800 votes were cast (meaning that there were **2133 more votes than registered voters**).

⁴ Record pp 164 – 166.

⁵ Annexure G, Record pp 152 – 154.

- 41.2 The Copley Primary School polling station in the Mazowe West constituency: only 661 voters registered to vote, but 1875 votes were cast (meaning that there were **1214 more votes than registered voters**).
- 41.3 The Chinhoyi Primary School polling station in the Chinhoyi constituency: only 190 voters registered to vote, but 1366 votes were cast (meaning that there were **1176 more votes than registered voters**).
- 41.4 The St Bernards Nyatsambo Primary School polling station in the Mhondoro-Ngezi constituency: only 766 voters registered to vote, but 1855 votes were cast (meaning that there were **1089 more votes than registered voters**).
- 42 There are many more.⁶ In total, the number of excess votes from all of these polling stations—that is, the total number of votes that exceeded the total number of voters registered at these polling stations—is **31 204 votes**.
- 43 Plus, there are polling stations where the ZEC claims voter turnout of more than 90%. That is far-fetched and entirely departs from historic trends.⁷
- 44 There are no legitimate reasons for these discrepancies. They are the result of illegal interference in the polling data to reverse-engineer an unfair and undemocratic election result.

Discrepancy six: More votes in the Presidential elections than in the Parliamentary elections

- 45 At each polling station, each voter was given three ballot forms: one for the presidential elections, and two for the parliamentary elections (one for the Senate, and one for the House of Assembly). Each ballot form had to be placed in its corresponding ballot box.

⁶ Annexure G, Record pp 152 – 154.

⁷ Record p 70.

Voters had to place each form in its corresponding ballot box, even if the forms were unmarked or spoiled.

46 Because each voter was given three forms, and because each voter had to place each form in its corresponding ballot box, the number of votes cast for the presidential election should equal the number of votes cast for the parliamentary election (that is, the number of votes cast for the presidential election should be the same as the number of votes cast for the Senate election, which should also be the same as the number of votes cast for the House of Assembly election).

47 For many polling stations, based on the ZEC's own results, the number of votes cast for the presidential election exceeded the number of votes cast for each parliamentary election.⁸

48 Expert evidence concludes that "the total number of the National Assembly votes was 4,734,161 against a total of 4,774,878 for the Presidential election."⁹ Expert evidence concludes that there were, inexplicably, more than **40 717 more votes** in the presidential election than the parliamentary election.¹⁰

49 There is no legitimate reason for this discrepancy. It is the result of illegal interference in the polling data to reverse-engineer an unfair and undemocratic election result.

Discrepancy seven: The ZEC's results do not tally

50 There are further discrepancies between the data published on the ZEC's website and the official election results declared by the ZEC. That is, even on the ZEC's own voter data, the official results are unsupported by the voting numbers.

⁸ Record pp 139 – 142.

⁹ Record p 45.

¹⁰ Record p 45.

51 The number of total registered voters given by the ZEC was 5,659,583. The ZEC announced a voter turnout of 72%. Based on this figures, the total number of votes case should have been 4,032,000. However, the ZEC announced a figure of 4,775,640—a difference of over **700,000 votes**.¹¹

Discrepancies between the ZEC's results and the V11 and V23a forms

52 The V11 and V23a forms are meant to provide a transparent and reliable means of checking the final election results published by the ZEC. V11 forms reflect the results at each individual polling station while V23a forms reflect the combined tally of results at all polling stations in a particular constituency. The results reflected in these forms should then tally with the overall results announced by the ZEC.

53 Under normal circumstances, the V11 forms should be posted outside each polling station and the ZEC should then make the V11 and V23 forms available to the public in an accessible format. This is essential to ensure transparency and accountability. To date, the ZEC has failed to do publish the original V11 and V23 forms.

54 As has been explained in the applicant's affidavit, only 79% of polling stations posted signed V11 forms outside the polling station. A large proportion of these forms subsequently went missing and election agents who have had access to these forms have faced violence and intimidation. There is also clear evidence of the use of "blank cheque" V11 forms – blank V11 forms that were signed in advance, before election results were entered. In addition, there is further evidence of an attempt to coerce election agents to sign reconstructed V11 forms after-the-fact, in an apparent attempt to give legitimacy to the ZEC's results.

¹¹ Record 138.

- 55 Despite the ZEC's failure to make the full set of V11s and V23s publicly available, members of the public have succeeded in securing copies of the V11 and V23a forms from across the country. A comparison between these forms and the ZEC's published results highlights extensive discrepancies.
- 56 The applicant's affidavit and the expert affidavit of Dr Nyandoro provide an analysis of a small sample of some 1200 V11 forms. The results of this analysis appear as Annexures F1 and F2 to the papers. A disk containing copies of this sample of V11s also appears at Annexure F3.
- 57 The comparison between the ZEC's published results and the sample of V11s reveals that:
- 57.1 The ZEC's published results inflated Mr Mhangagwa's total votes by at least **10,343 votes**;¹²
- 57.2 More than 19,722 votes for Mr Chamisa were entirely disregarded in the ZEC's election results.¹³
- 58 No doubt a comparison between all of the V11s and the ZEC's results would reveal far greater discrepancies. As Dr Nyandoro confirms "*there is a very high probability of unearthing more inflated votes in favour of Emmerson Dambudzo Mhangagwa if the sample is widened*".¹⁴

¹² Annexure F1, pp 143 – 146.

¹³ Annexure F2, pp 147 – 150.

¹⁴ Dr Nyandoro's affidavit, p 72 para 8.3.

59 The ZEC is therefore duty-bound to assist this court by making available all of the V11 and V23a forms in its possession to allow this Court and the parties to scrutinise its results in greater detail.

Summary of the evidence

60 These discrepancies provide clear evidence of systematic manipulation of the voting results. The results are not a fair or accurate reflection of the votes cast. On this basis alone the presidential elections must be set aside.

61 It is clear that Mr Mnangagwa fell far short of the 50%+1 votes required to avoid a run-off. On the ZEC's published results, Mr Mnangagwa avoided a run-off by a mere **31,830** votes. However, the evidence presented above shows that:

61.1 At least **7,730** of these votes must be excluded due to double-counting of polling stations;

61.2 At least **9,903** votes must be disregarded due to duplicate results;

61.3 A further **5,503** votes for Mr Mnangagwa at just two "ghost polling stations" also fall to be disregarded. Many other ghost polling stations are still likely to be uncovered.

61.4 At least **10,343** votes for Mr Mnangagwa must also be excluded as they do not correlate with the sample of V11 forms. A full sample will likely reveal many more inflated results.

61.5 No less than **31,302** votes are also invalid due to votes exceeding the number of registered voters at polling stations.

61.6 A further **40,717** votes are cast in doubt to the disparity between the number of votes cast in the presidential and parliamentary elections.

62 These are but a small sample of the discrepancies and irregularities. Even on this small sample, it is clear that the irregularities affected the outcome of the elections. At the very least, Mr Mnangagwa would have faced a run-off if the results had been calculated correctly.

IRREGULARITIES DURING THE ELECTION CAMPAIGN AND ON ELECTION DAY

63 The ZEC's manipulation of the voting results was consistent with a pattern of unlawful conduct during the election campaign and on election day.

64 The applicant's affidavit and the supporting affidavits and annexures provide a detailed account of this conduct, which includes:

64.1 Intimidation, harassment and bribery in the run-up to elections and on election day;

64.2 Biased coverage of the election campaign by the state-owned media;

64.3 The ZEC's partisan conduct, in favour of Mr Mnangagwa and the ZANU-PF;

64.4 Problems with the voters roll and the failure to make the voters roll available to all parties in advance of the election;

64.5 The failure to allow almost 40,000 civil servants and teachers to vote on election day.

- 64.6 The unusually high number of assisted voters on election day, including evidence of traditional leaders and ZANU-PF officials bringing voters to polling stations in organised batches.
- 64.7 Evidence of post-election violence, intimidation and harassment of opposition polling agents and supports.
- 65 The absence of a level playing field is well illustrated by the Build Zimbabwe Alliance's experience in the Zimba district.
- 65.1 We had secured a police clearance and a venue for our campaign rally in the district, which is the constituency of Justice Minister Ziyambi.
- 65.2 Shortly before the rally, Justice Minister Ziyambi issued a letter in which he instructed the council that no opposition party rallies could be held in the district as ZANU-PF had booked all available open spaces until the end of August 2018, long after the elections. The letter stated:
- “Be advised that all open space in Zvimba Rural District is fully booked till the end of August 2018 ...*
- “No political party should be allowed to hold any campaign rally or gathering as all space is booked every single day.”*
- 65.3 I attach news reports documenting this incident, marked **Annexure D**.
- 65.4 This example is symptomatic of the broader irregularities in the election campaign.
- 66 Many of these irregularities were confirmed by the preliminary report of the European Union Election Observation Mission (EU EOM). A copy of this report appears in the

applicant's supplementary bundle as Item 3.¹⁵ This preliminary report was released on 1 August 2018, before the final announcement of the presidential election results.

67 In its preliminary report, the OEM noted that:

"[T]he misuse of state resources, instances of coercion and intimidation, partisan behaviour by traditional leaders and overt bias in state media, all in favour of the ruling party, meant that a truly level playing field was not achieved, which negatively impacted on the democratic character of the electoral environment." (Emphasis added)

68 The report further noted that there were widespread instances of voter intimidation by members and supporters of the ruling party:

"Observers widely reported on efforts to undermine the free expression of the will of electors, through inducements, pressure and coercion against prospective voters to try to ensure a vote in favour of the ruling party. Such practices also included direct threats of violence, pressure on people to attend rallies, partisan actions by traditional leaders, collection of voter registration slips and other measures to undermine confidence in the secrecy of the vote, manipulation of food aid and agricultural programmes and other misuses of state resources." (Emphasis added)

69 The report also confirms that the state-owned TV, radio and newspapers were biased in favour of the ruling party throughout the election campaign:

"Based on EU EOM monitoring, the state broadcaster, the Zimbabwe Broadcasting Corporation (ZBC), failed to abide by its legal obligation to ensure equitable and fair treatment to all political parties and candidates. State-owned TV, radio and newspapers, which dominate the media landscape, were heavily biased in favour of the ruling party and incumbent president in their election-related coverage. Media operated in a generally free environment during the campaign and freedom of expression was respected. The legal framework for media, while providing for fundamental rights, needs further improvement to bring it into line with the Constitution." (Emphasis added)

70 To the best of my knowledge, the EU OEM and other international election observers are still in the process of finalising their reports on the elections. No doubt, the final reports will provide further confirmation of irregularities in the election process.

¹⁵ Supplementary Bundle, pp 294 – 304.

JUST AND APPROPRIATE REMEDY

71 I substantially support the relief set out in the draft order submitted by the applicant.

72 First, I support the declaratory order that the presidential elections were not free and fair.

72.1 This declaration is necessary to vindicate the constitutional and statutory rights to a free and fair election which have been unjustifiably infringed.

72.2 It is just and equitable for this Court to grant this declaration to ensure that the ZEC and other implicated respondents are under no illusions as to the unlawful nature of their conduct and to provide proper guidance for the conduct of future elections.

73 Second, I also support an order invalidating the presidential elections under section 93(4)(b) of the Constitution and/or section 117 of the Electoral Act.

73.1 This order is the just and appropriate remedy under section 93(4)(b) of the Constitution as the irregularities in the election process resulted in an election that was not free and fair. I submit that the absence of a free and fair process is sufficient to establish grounds for invalidation.

73.2 This order is also justified under section 177 of the Electoral Act as the irregularities in the election process were in breach of the principles underpinning the Electoral Act and affected the result of the election. But for these irregularities, Mr Mnangagwa would not have won the election.

- 73.3 Any difference between the two tests for invalidation under section 93(4)(b) of the Constitution and section 117 of the Electoral Act will be addressed in argument.
- 74 Third, I further support the order directing a new presidential election within 60 days. This order follows as a matter of course from an order invalidating the election under section 93(b) of the Constitution.
- 74.1 I submit that this election should take the form of a run-off election between the applicant and Mr Mnangagwa.
- 74.2 Alternatively, there should be an entirely new presidential election, if it is found that the election results are too compromised to allow for any accurate identification of the candidates for a run-off.
- 75 Finally, I submit that it would be just and appropriate for this Court to exercise its broad remedial discretion to grant a structural interdict directing the ZEC to take appropriate steps to ensure that the fresh election is truly free and fair and to report to this Court on its progress. I submit that there are ample grounds for this structural interdict on the basis that:
- 75.1 It is necessary to give effect to the right to a free and fair election under a credible body, which is independent. The current composition of the ZEC which includes a chairperson with links to senior members of the government does not conduce to the required level of independence.
- 75.2 It is also essential that employees and staff of ZEC are structurally and operationally independent. My understanding is that the ZEC secretariat comprises of employees from government departments, including the military.

To guarantee its independence ZEC should be purged of any employee who is linked to the government or the military.

75.3 There is clear evidence that the presidential elections were not free and fair and that the ZEC failed in its constitutional and statutory duties.

75.4 There is the reasonable apprehension that the ZEC will again fail to ensure a free and fair election unless subject to a structural interdict.

75.5 Reporting duties are necessary to ensure that the ZEC is transparent and accountable both in its preparations for the fresh election and in the manner in which it tallies and publicises the eventual results.

76 The precise terms of this just and appropriate remedy, including the structural interdict, will be addressed further in legal argument.

THUS DONE AND SWORN TO AT HARARE THIS ____ DAY OF AUGUST 2018

SIGNED

NOAH MANYIKA

BEFORE ME

COMMISSIONER OF OATHS