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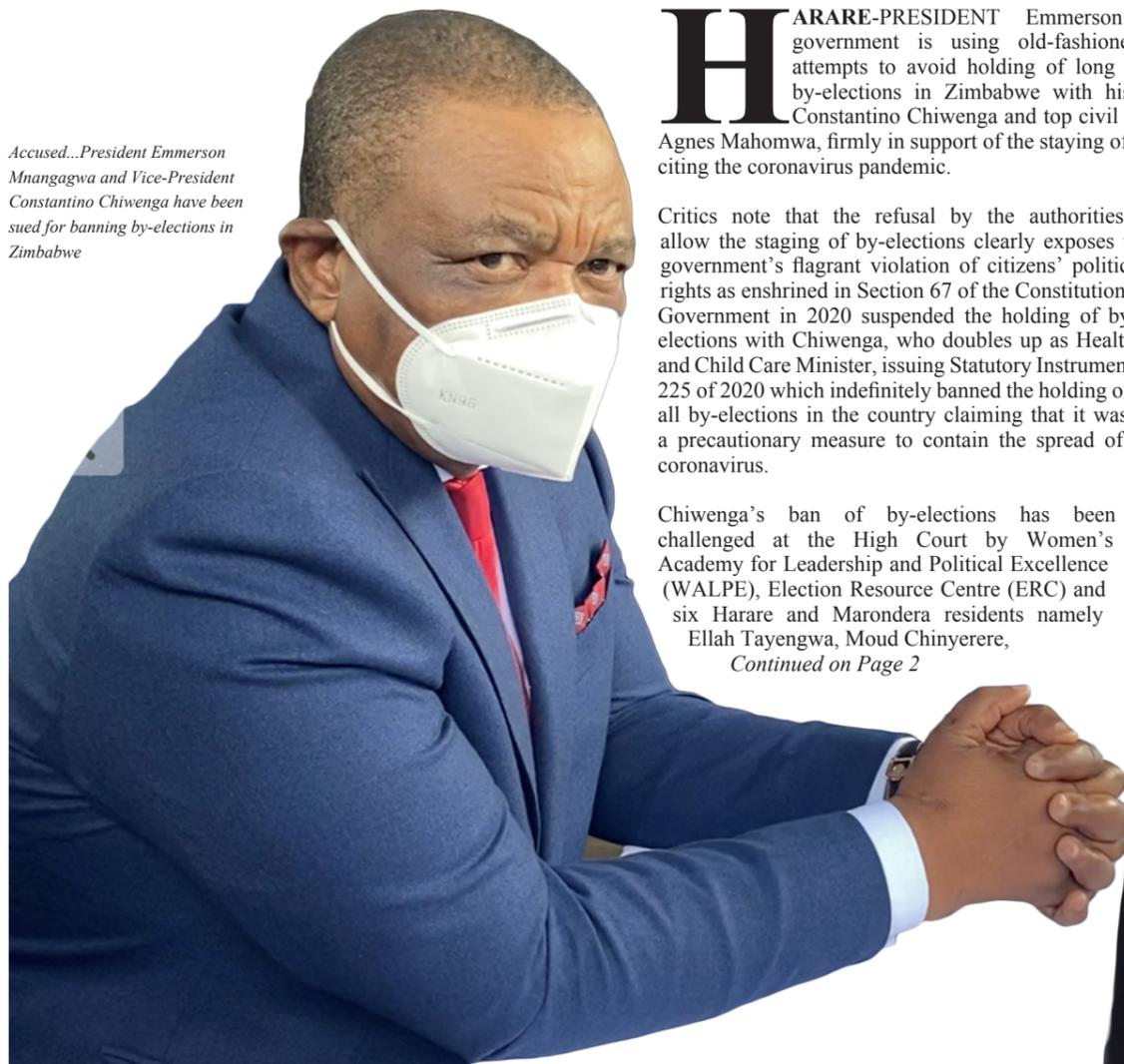
Dewa slams by-elections ban

HARARE-For prominent Human Rights Defender (HRD) Sitabile Dewa, the continued delays in holding long overdue by-elections strikes at the core of her business which is empowering women to claim their space by engaging in politics and...
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ED, Chiwenga, ZEC violate citizens' political rights

...as they employ archaic tactics to thwart by-elections

Accused...President Emmerson Mnangagwa and Vice-President Constantino Chiwenga have been sued for banning by-elections in Zimbabwe



HARARE-PRESIDENT Emmerson Mnangagwa's government is using old-fashioned tactics in attempts to avoid holding of long outstanding by-elections in Zimbabwe with his deputy, Constantino Chiwenga and top civil servant, Agnes Mahomwa, firmly in support of the staying of polls, citing the coronavirus pandemic.

Critics note that the refusal by the authorities to allow the staging of by-elections clearly exposes the government's flagrant violation of citizens' political rights as enshrined in Section 67 of the Constitution. Government in 2020 suspended the holding of by-elections with Chiwenga, who doubles up as Health and Child Care Minister, issuing Statutory Instrument 225 of 2020 which indefinitely banned the holding of all by-elections in the country claiming that it was a precautionary measure to contain the spread of coronavirus.

Chiwenga's ban of by-elections has been challenged at the High Court by Women's Academy for Leadership and Political Excellence (WALPE), Election Resource Centre (ERC) and six Harare and Marondera residents namely Ellah Tayengwa, Moud Chinyerere,
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Tanzania and Zambia did it, why can't Zim do it too?



ZLHR lawyer Tendai Biti, Solomon Bobosibunu of Election Resource Centre and Tarisai Machakaire of Women's Academy for Leadership and Political Excellence, whose organisations are challenging the by-elections ban.

HARARE-While High Court Judge Justice Siyabona Musithu reserved the ruling over holding of by-elections, questions were abound why government is intent on denying citizens their political rights at a time some African countries have held polls in the midst of the coronavirus pandemic.

In reserving the ruling after hearing submissions from all parties in the matter, Justice Musithu said he needed more time to go through all the submissions before handing down his verdict on the application. Justice Musithu quizzed lawyers representing President Emmerson

Mnangagwa, Health and Child Care Minister Constantino Chiwenga and Zimbabwe Electoral Commission (ZEC) on why it was not possible to hold by-elections when other countries did so under the prevailing COVID-19 conditions.

Government in 2020 suspended the holding of by-elections with Chiwenga issuing Statutory Instrument 225 of 2020 which indefinitely banned the holding of all by-elections claiming that it was a precautionary measure to contain the spread of coronavirus.

But Chiwenga's ban of by-elections was challenged at the High

Court on 13 October 2020 by Women's Academy for Leadership and Political Excellence (WALPE), Election Resource Centre (ERC) and six Harare and Marondera residents namely Ellah Tayengwa, Moud Chinyerere, Agnes Togarepi, Gracious Matsunga, David Gwanzura and Loice Gwangwara.

In the application filed by Tendai Biti of Zimbabwe Lawyers for Human Rights, WALPE, ERC, Tayengwa, Chinyerere, Togarepi, Matsunga, Gwanzura and Gwangwara, who cited ZEC, Mnangagwa and Chiwenga as respondents, argued that the suspension was a breach of the Electoral Act and the Constitution as government should have held by-elections before 30 September 2020 to fill in vacancies in local authorities and in the National Assembly.

In May, Justice Musithu, who presided over the hearing and determination of WALPE, ERC and Tayengwa, Chinyerere, Togarepi, Matsunga, Gwanzura and Gwangwara's application, quizzed Olivia Zvedi and Tawanda Kanengoni, the lawyers representing President Mnangagwa, Chiwenga and ZEC on why government was reluctant to hold by-elections considering that it had eased national lockdown regulations including opening schools and universities.

Justice Musithu also asked why government was averse to holding by-elections and yet other countries such as Tanzania and the United States of America had held polls in 2020. In August, Zambia held general elections, where voters elected Hakainde Hichilema as the country's new leader after defeating Edgar Lungu.

The Judge also asked Zvedi and Kanengoni to give an indication on when the indefinite suspension of by-elections would be lifted. In his submissions, Biti argued that the motive of imposing a ban on by-elections by government has nothing to do with curbing coronavirus but is a suppression of democracy.

He said government had suspended the Constitution by not implementing its provisions such as holding by-elections whereas other countries in Africa and beyond have held polls and emphasised that all constitutional obligations must be complied with diligently and without delay.

On his part, Zvedi argued that it is prudent for government to suspend by-elections in order to conquer the spread of coronavirus since the risk of another wave of the pandemic was high. She also argued that section 86 of the Constitution provides for the limitation of rights hence government had taken the right decision in suspending by-elections.

Kanengoni argued that holding by-elections at a time of the coronavirus pandemic would curtail effective participation of the electorate and said ZEC could only conduct by-elections once President Mnangagwa issues a proclamation. Justice Musithu reserved his ruling on the application seeking an order to compel ZEC to hold by-elections across the country.

ED, Chiwenga, ZEC violate citizens political rights

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"I deny that it is possible to hold by-elections under 'strict guidelines' pertaining to sanitisation and the wearing of masks and gloves,"

Agnes Togarepi, Gracious Matsunga, David Gwanzura and Loice Gwangwara. In the application filed by Tendai Biti of Zimbabwe Lawyers for Human Rights, WALPE, ERC, Tayengwa, Chinyerere, Togarepi, Matsunga, Gwanzura and Gwangwara, who cited Zimbabwe Electoral Commission, Mnangagwa and Chiwenga as respondents, argued that the suspension was a breach of the Electoral Act and the Constitution as government should have held by-elections before 30 September 2020 to fill in vacancies in local authorities and in the National Assembly.

But a perusal of opposing affidavits filed by Chiwenga and Mahomva, the national COVID-19 Co-ordinator, suggest that the authorities are content in denying citizens their political rights despite such rights being enshrined in Section 67 of the Constitution.

"I deny that it is possible to hold by-elections under "strict guidelines" pertaining to sanitisation and the wearing of masks and gloves," reads part of Chiwenga's 12-page opposing affidavit filed at High Court in response to the application. The Health and Child Care Minister pointed out that some countries in Europe went overboard with their relaxations, "now they are hastily re-introducing the stringent measures which they had before. Now they are reaping the fruits of having opened up too much and having failed to exercise caution. We do not want our country to get into that same situation."

Chiwenga denied that his measures contravene section 68 of the Public Health Act, or sections 158 and 159 of the Constitution and further denied that in enacting S.I 225A of 2020 he automatically suspended the operation of the Constitution, or acted above, or in conflict with, the Constitution and the Electoral Act.

"I also deny that the regulation contained in S.I 225A of 2020 is grossly irrational and unreasonable, and in support of my denial I wish to make it clear that I enacted S.I 225A of 2020 after taking expert legal advice from officials in my Ministry. Such advice as I received concurs with the opinion expressed in the supporting affidavit of Agness Illah Mahomva which is filed herewith. Further, it is evident in my view that currently most of our people appear to have relaxed their guard against the spread of pandemic. I have observed laxity in the manner in which people wear their masks, the non-observance of social distancing in gatherings at churches, restaurants, clubs and transportation buses and cars.

"There is even laxity in sanitisation and mask wearing in public transport. Law enforcement is trying its best to ensure compliance with COVID-19 legislation, but clearly it is not winning the war against this laxity. There is, therefore, already an existing considerable risk of a conflagration in the spread of the pandemic due to the laxity which has developed among the population. It is as if the pandemic has ceased to exist," Chiwenga said.

Chiwenga charged that while World Health Organisation (WHO) guidelines permit the holding of elections they require that this be done in circumstances where the risk of the spread of the pandemic is minimal or minimised, adding that it would be sheer folly to hold an election in circumstances where people will be infected and some will die. "That is not what the WHO advocates," he said. "The fact

that other countries have scheduled to hold elections now or in the near future does not mean that Zimbabwe should blindly follow suit. The decision on whether or not to hold elections can properly only be taken after receiving scientific advice on the possible attendant risks of doing so," he added.

In her seven-page affidavit, Mahomva supported and agreed with her Chiwenga that holding by-elections in Zimbabwe would be tantamount to signing a death warrant for citizens.

"It is not advisable to hold by-elections as this may create uncontrolled gatherings, whether small or large, throughout the country," reads part of Mahomva's affidavit in which she goes at length to buttress Chiwenga's assertions.

But in his submissions, Biti argued that the motive of imposing a ban on by-elections by government has nothing to do with curbing coronavirus but is a suppression of democracy. He said government had suspended the Constitution by not implementing its provisions such as holding by-elections whereas other countries in Africa and beyond have held polls and emphasised that all constitutional obligations must be complied with diligently and without delay.

However, Chiwenga argued that while he took note that elections will be held, or have already been held in some eight African countries, he stated that it is up to each country to assess the attendant risks of contagion to its population which will ensue from the holding of elections.

"Zimbabwe is equally entitled to assess the risks to its own population of holding by-elections. It is not a simple issue of following what other countries are doing. The numbers of infections and deaths in Zimbabwe may presently be low when compared to the statistics of other countries. This, however, is no justification for holding by-elections which may result in a spike in those numbers leading to unnecessary suffering or death of people. Government would be irresponsible if it were to allow that to happen. There is no need for even one life to be lost simply because we want to hold by-elections. Our Constitution is very firm that everyone has a right to life. Government has both a legal and moral duty to preserve everyone's life," Chiwenga said.

Voter fights for her political rights



ZEC Chairperson Priscilla Chigumba

MARONDERA-Loice Gwangwara is a Zimbabwean citizen who resides in Marondera's suburb of Rujeko. In 2018, she voted in Marondera Central constituency, where Caston Matewu was elected Member of Parliament. Matewu is no longer a legislator after he was recalled by a group that has taken control of the party's parliamentary affairs.

Keen to exercise her right to choose a representative for her constituency as a registered voter, Gwangwara feels the decision to freeze by-elections is disenfranchising her. Gwangwara has now approached the High Court to assert her rights. She is the sixth applicant in a case in which some Harare and Marondera residents and two organisations are challenging the suspension of the holding of by-elections on perceived public health grounds.

Gwangwara argues that since a vacancy has occurred in her constituency it has to be duly filled through holding a by-election. She has joined other citizens to fight for their political rights as enshrined in the Constitution.

"I have a direct interest in the matter. As a Zimbabwean citizen, I am entitled to the protection of the rights given to me by Section 67 and Section 2 of the Constitution. That right is also codified in Section 3 of the Electoral Act. I therefore have locus standi to bring the instant application," Gwangwara said in her supporting affidavit to an application challenging the by-elections ban.

"I seek a declaratory in this case on the following terms; The 1st Respondent (ZEC) and 2nd Respondent (President Mnangagwa)'s decision not to hold by-elections before the 30th of September 2020, was in breach of The Electoral Act and Sections 158 and 159 of the Constitution of Zimbabwe. That SI 225A/2020 is ultra vires Section 39 and 121A of the Electoral Act. That SI 225A/2020 is ultra vires Section 158 and Section 159 of the Constitution. My cause of action is simple. It is that the 1st and 2nd Respondents, breached Section 158(2) and Section 159 of the Constitution of Zimbabwe when they failed to conduct by-elections that arose in the country before the 30th of September 2020."

Just like other applicants in the matter, Gwangwara states that President Emmerson Mnangagwa and the Zimbabwe Electoral Commission also breached Section 39 of Electoral Act in the event of the 2nd Respondent and Section 121 A in the case of 1st Respondent.

"My other cause of action pertains to the Regulations enacted by the 3rd Respondent (Chiwenga) on the 30th of September 2020 being SI 225A/2020. It is my respectful contention that the same are; ultra vires Section 158 (2) and 159 of the Constitution, ultra vires Section 39 and Section 121 A of the Electoral Act."

#ZambiaDecides2021: Reflections from Zimbabwe



By Vivid Gwede

The just-ended Zambian election is proving that democracy is consolidating in the northern neighbour, following President Edgar Lungu's conceding of defeat to president-elect Hakainde Hichilema.

The election will give birth to the sixth power transfer in Zambia.

It was in 1991 that a trade unionist and opposition leader, Frederick Chiluba, outpolled the big man, Kenneth "KK" Kaunda, leading to the first post-independence peaceful transfer of power.

The power of that example would have not been lost on Zimbabwe's labour movement and civil society as they birthed the biggest opposition party MDC to have challenged Zanu-PF's rule in elections since the late 1990's.

Taking on Chiluba's cue, the former trade unionist and late leader of the opposition MDC party Morgan Tsvangirai floored Robert Mugabe in the 2008 elections were it not for manipulation of the vote.

If Chiluba's victory inspired opposition forces then, Kaunda's good example of conceding electoral defeat was missed by the Zimbabwean ruling class, which has hung onto power by means fair and foul.

Zambia's democracy underwent another test in the past days as the country staged elections in a tense environment, which have resulted in the victory of opposition leader, Hichilema, against incumbent, Lungu.

In Zimbabwe, the developments were watched with keen interest by both the opposition movement and the ruling party.

For an opposition movement long in the "trenches" in Zimbabwe, it was taken as a case study from which to draw inspiration and lessons ahead of the 2023 elections.

This is following the victory of the Lazarus Chakwera-led opposition in the 2020 Malawian election.

The replication of political phenomena across countries, or "political waves" have been shown to be possible for example in the Arab Spring, or the so-called "winds of change" which brought independence in Africa as had been predicted by former British Premier Harold Macmillan.

But for the Zimbabwean ruling party, the hope was that this Zambian election would demoralise opposition forces, not only in Zambia, but also in Zimbabwe through defeat and set another regional precedent.

As the great English playwright William Shakespeare observed: "Uneasy lies the head that wears the crown."

Notably, ruling parties in the region have been united against opposition forces seeking to upstage them.

And in that fraternity of ruling parties, they have been standing in solidarity with each other.

Thus, any change of fortunes for one of the ruling parties, is bound to bring discomfort especially in Zimbabwe where the opposition is comparatively strong.

Hence the quick move by the ruling punditry to discount any possibility of replication from Zambia.

Equally, the opposition parties have been standing in solidarity and sharing lessons with each other in their search for an elusive breakthrough to power.

Therefore, ruling party pundits and officials had hoped that #ZambiaDecides2021 would confirm the unassailability of the ruling parties and already set the tone for a Zanu-PF victory ahead of 2023.

Following Malawi's opposition victory in 2020, however the dominoes have been falling in the former Rhodesian federation.

It is only a welcome fact that after some initially concerning statements by Lungu sense finally prevailed, and he conceded.

The only one surviving of his predecessors, former President Rupiah Banda appears to have been instrumental in mediating and ensuring that Lungu concedes and that there is a peaceful transfer of power.

Like in the case of Kaunda long ago, Lungu's conceding of defeat might not be automatically copied in Zimbabwe without great persuasion should the ruling party lose the coming elections, however.

That Hichilema only succeeded at the sixth attempt shows the difficulties faced by the opposition but also the importance of learning from past failure and consolidating the support base.

But the number of his attempts, especially leading the same party, might also be seen as failed succession in popular opposition parties.

Both recent elections in Malawi and Zambia underscore the importance of independent state institutions but with some pressure from the opposition in ensuring a democratic transition or consolidation.

Another crucial lesson for the opposition is the importance of an effective campaign and huge voter turnout anchored on the youth, which can deliver a landslide, including being able to fish from the pond of the ruling party strongholds.

The importance of peacefully mobilising the electorate so that it is prepared to defend the vote is another key takeaway.

The internet generation is also becoming an electoral reality.

Whether the Zimbabwean domino will also fall in 2023 or not to complete the former federation's democratic "wave", the country has crucial lessons to learn from Zambia's successful three decades-old democratic experiment.

Gwede is an analyst based in Harare.

Zambia defies COVID-19 as it holds historic elections

...as Zimbabwe dilly-dallies in staging by-elections

LUSAKA, ZAMBIA-ONE Zambia, One Nation. This slogan serenaded in and around the Zambian capital, Lusaka, as it became increasingly clear that opposition leader, Hakainde Hichilema, was running sure to win the neighbouring southern African country's presidential elections.

Despite fears of the coronavirus pandemic which the ruling ZANU PF government in Zimbabwe has used to suspend long outstanding by-elections, Zambians flocked to polling stations to elect a new president, parliamentarians and councillors in a dramatic one-day poll which saw the opposition thoroughly trashing the ruling party.

As counting of the ballots continued with results showing that Hichilema would be installed as the 7th president of the Republic of Zambia, elated supporters flooded the streets of Lusaka chanting HH, as the opposition leader is popularly known, One Zambia, One Nation. They camped outside his mansion in one of the suburbs of Lusaka waiting for the announcement of official results.

Out-going president Edgar Lungu, tried to duck and dive. Lungu, clearly unprepared for the thumping, initially claimed the elections were not free and fair, citing alleged murder and intimidation of his supporters but the Electoral Commission of Zambia would have none of it while behind the scenes, scores of other losing presidential



candidates exerted pressure on Lungu to concede defeat.

Zambians did not lose sight of the fact that three days before the 12 August polls, Lungu, in what appeared to be last ditch attempts to solicit for votes, had presided over the official opening of the Chinese-built Kenneth Kaunda International Airport amid pomp and funfair. In his campaigns, Lungu never failed to point out that he had brought massive infrastructure developments: new roads, a new airport, hospitals and "spaghetti" roads.

But, apparently, the majority of Zambians showed him the door in a

dramatic election which was monitored by regional and international missions. In interviews with The Legal Monitor, the generality of Zambians, rightly or wrongly, accused Lungu's administration of corruption through giving public infrastructure tenders to Chinese firms.

At exactly 2.30am on 16 August 2021, Hichilema, a self-made billionaire who made his fortunes during the MMD government of Frederick Chiluba, was declared by the Electoral Commission of Zambia as the duly elected 7th president of the Republic of Zambia, much to the chagrin of Lungu and his supporters from the Patriotic Front.

With the proverbial tail between his legs, Lungu begrudgingly conceded defeat while hardliners in his camp sought to pressure him to declare a state of emergency and stay at State House. "These elections were held on the principle of democracy which requires the people to elect their preferred representatives. I wish to commend Electoral Commission of Zambia for having managed the electoral process diligently despite the challenges of Covid-19, electoral violence and a stifling political environment," said Lungu in his speech accepting defeat.



"Despite our misgivings on the violence and electoral malpractices, I have deeply reflected on the need for Zambia to move forward as a unitary state. In line with the people's will who spoke through the ballot, I have come to the inescapable conclusion that as the 6th Republican President, I will hand over the instruments of power to Mr Hakainde Hichilema, the president of United Party for National Development who clearly has won these elections.

"I unequivocally concede defeat as per the results that have been published by Electoral Commission of Zambia. I therefore appeal to members of the Patriotic Front and Zambians at large to support the new government in all endeavors. Zambia is bigger and mightier than all of us. I have no doubt that Zambia is in safe hands.

Dewa slams by-elections ban



Standing up for women...Sitabile Dewa of WALPE

HARARE-For prominent Human Rights Defender (HRD) Sitabile Dewa, the continued delays in holding long overdue by-elections strikes at the core of her business which is empowering women to claim their space by engaging in politics and contest for public office. Dewa, who represents Women's Academy for Leadership and Political Excellence (WALPE) as the organisation's Executive Director, is among eight applicants, who include Election Resource

Centre, Ellah Tayengwa, Moud Chinyerere, Agnes Togarepi, Gracious Matsunga, David Gwanzura and Loice Gwangwara, who have approached the High Court seeking a declaratory order to the effect that the failure by Zimbabwe Electoral Commission (ZEC) to hold by-elections is unconstitutional.

A perusal of her supporting affidavit in the application shows that the lawsuit against President Emmerson Mnangagwa, Vice-President and Health and Child Care Minister Constantino Chiwenga and ZEC is motivated by a deep commitment to women empowerment and constitutionalism.

"We recognise that for gender equality to be achieved in the country, women should actively, freely and fully participate in all other public elected positions. This is our core business," said Dewa, the Executive Director of WALPE. She said WALPE's core objective is to increase the number and quality of women occupying political leadership positions. This is achieved through providing long term capacity building trainings, mentorship, coaching and grooming exercises to women vying for public elected office.

Dewa stated that it is her organisation's aim to ensure that women enjoy the right that they have been granted under section 17, 56 and 80 of the Constitution.

"Once we train, mentor and groom aspiring women leaders, we expect them to take up positions of leadership and authority in both the private and public sector. One of our aims is to ensure gender balance and equity in the elected positions and in all public bodies as is demanded by the Constitution," she said in an affidavit supporting the application.

The human rights defender argued that by-elections should be held to fill vacant seats. The freezing of elections is taking away the rights of women who want to participate in political processes such as elections. "It is also our considered view that the decision by the Respondents (ZEC, Mnangagwa and Chiwenga) to ban by-

elections is unlawful," said Dewa. Dewa and other applicants want the High Court to issue an order stating that President Mnangagwa, Chiwenga and ZEC's decision not to hold by-elections is in breach of the Electoral Act and Sections 158 and 159 of the Constitution of Zimbabwe.

The applicants maintain that Statutory Instrument (SI) 225A/2020 issued by Chiwenga, who doubles up as Health and Child Care Minister, is in violation of Section 39 and 121A of the Electoral Act and that SI 225A/2020 is in violation of Section 158 and Section 159 of the Constitution of Zimbabwe.

"Our cause of action is simple: that the First (ZEC) and Second Respondent (President Mnangagwa) breached Section 158(2) and Section 159 of the Constitution of Zimbabwe when they failed to conduct by-elections that arose in the country before the 30th of September 2020. They also breached Section 39 of Electoral Act in the event of the 2nd Respondent and Section 121 A in the case of 1st Respondent. Our second cause of action pertains to the Regulations enacted by the 3rd Respondent (Chiwenga) on the 30th of September 2020 being SI 225A/ 2020. It is our respectful contention that the same are; ultra vires Section 158 (2) and 159 of the Constitution, ultra vires Section 39 and Section 121A of the Electoral Act. They are in any event irrational," argued Dewa.