

PRESTON TANATSWA PARADZAYI
versus
WALTER MUNYEVERI
and
ZIMBABWE ELECTORAL COMMISSION
and
A TARANJA
and
TSOMONDO WILSON CHARAMBA

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE; 7 and 8 March 2025

Urgent Court Application

W Madzimbamuto, for the applicant
T M Kanengoni, for the 2nd and 3rd respondents
No appearance for the 1st and 4th respondents

CHIKOWERO J

THE PARTIES

[1] The applicant, first and fourth respondents are candidates in the Ward 3 Norton Town Council (Norton Constituency) By Election slated for 8 March 2025. The second respondent (ZEC) is a Commission established in terms of s 238 of the Constitution of Zimbabwe. It administers Presidential, Senatorial, House of Assembly and Council elections in this country. The third respondent presided over the nomination court whereat the applicant, first and fourth respondents were successfully nominated as candidates in the council By Election in question.

THE FACTUAL BACKGROUND

[2] On 6 February 2025, the applicant, first and fourth respondents were successfully nominated as candidates in the Ward 3, Norton Town Council (Norton Constituency) By Election set for 8 March 2025.

- [3] The By Election was triggered by the need to fill a vacancy that arose as a result of the death of a councillor who had been elected during the 23 August 2023 Harmonized Elections.
- [4] During a campaign meeting held on 27 February 2025 the applicant received information indicating that the first respondent did not qualify for nomination as a candidate for election as councillor for Ward 3, Norton Town Council (Norton Constituency) By Election slated for 8 March 2025. The disqualification was this. At the time that he successfully filed his nomination papers the first respondent did not reside in Ward 3 Norton Town Council. He falsely presented Stand 4165 Mbira Street, Nharira View, Norton (which falls within Ward 3, Norton Town Council) on his nomination papers as his residential address in order to be successfully nominated as a candidate for councillor in the By Election in question.
- [5] The applicant investigated the veracity of the information furnished to him. On 4 March 2025 the applicant obtained an affidavit deposed to by Abraham Nyathi. The latter is the caretaker of the property called stand 4165 Mbira Street, Nharira View, Norton. He also resides there. He was mandated by Tracy Ndlovu, the owner of the property, to be the caretaker. He deposed that the first respondent neither resides at nor owns stand 4165 Mbira Street, Nharira View, Norton. Further, that the first respondent was not authorised by Tracy Ndlovu to use the residential property in question for any business or processes whatever. Nyathi's affidavit is part of the founding papers.
- [6] On 4 March 2025 the applicant's legal practitioners addressed a letter to ZEC headed "FRAUDULENT RESIDENTIAL ADDRESS SUBMITTED BY ONE WALTER MUNYEVERI FOR WARD 3 BY ELECTION UNDER NORTON CONSTITUENCY SCHEDULED FOR 8 MARCH 2025." The third paragraph of that letter reads:
"It has come to the attention of our client that Mr Walter Munyeveri fraudulently registered his candidature using an address (No 4165 Mbira Street, Nharira View, Norton) which does not belong to him nor does he reside as a tenant. Further he has not been authorised to use same by either the owner or the current caretaker who is currently in charge of the property in question. The affidavit by the caretaker is hereby attached. The net effect is that the candidature of the said Walter Munyeveri was fraudulently registered with your institution and we seek your urgent intervention."

This letter, too, is annexed to the founding affidavit. The letter was received by the third respondent, in his capacity as ZEC's Wards Elections Officer, on 5 March 2025 at 10:15am.

[7] For ZEC, S Tongayi (The Acting Chief Elections Officer) responded on 5 March 2025 in these terms:

“The Zimbabwe Electoral Commission noted that you allege criminal behaviour on the part of Walter Munyeveri in that he fraudulently registered his candidature using an address which does not belong to him. We advise that you take the matter up with the Zimbabwe Republic Police who are constitutionally mandated to investigate and prevent crime. In so far as you seek disqualification of the said candidate from the election please note that the nomination court became functus officio after its sitting and any redress you may require will have to be via the courts.”

This letter is attached to the founding affidavit.

THE APPLICATION

[8] Guided by *Kasukuwere V Mangwana SC 78/23*, *Citizens Coalition for Change and Another V Sibanda and Ors HH53/24*, among other cases, the applicant, on 7 March 2025, filed on urgent court application under s 85 of the Constitution as read with s 115 (1) (b) of the Electoral Act [*Chapter 2:13*] alleging that the second respondent’s acceptance of the first respondent’s candidature for the By Election in question violates the applicant’s right to vote and participate in a lawful electoral process as enshrined in ss 67(1)(a) and (b) of the Constitution.

[9] S 67(1)(a) entrenches every Zimbabwean citizen’s right to free, fair and regular elections for any elective public office established in terms of the Constitution or any other law. S 67 (1)(b) provides for the right to make political choices freely.

[10] One of the requirements qualifying a person as a voter in local authority elections is that the voter must be a resident in that ward. Among other things, the fact that the person (the voter) is resident in that ward entitles the voter to be enrolled on a voter’s roll prepared for that ward. See s 115 (1)(b) of the Electoral Act [*Chapter 2:13*]

[11] In relevant part, S 119 of the Electoral Act reads:

“119 Qualification for election as councillor
(1) Any person who-
(a) is a citizen of Zimbabwe; and
(b) has attained the age of twenty-one years; and
(c) is enrolled on the voter’s roll for the council area concerned and
(d) ...
Shall be qualified to be elected as a councillor”

No issue arises in respect of the requirements set out in s 119(1)(a) and (b). As for s 119 (1) (c) as read with s 115 (1) (b) of the Act, there is no evidence to controvert that which the applicant placed before me, namely, that the first respondent fraudulently got himself enrolled on the voter's roll for Ward 3, Norton Town Council (Norton Constituency) and was successfully nominated as a candidate for the Council By Elections for Ward 3. In short, that he was not a resident in Ward 3 at all material times. That really is the end of the matter.

[12] The first respondent neither appeared at the hearing nor filed opposing papers. What this means is that he has not disputed the factual basis of the application.

[13] The fourth respondent was not cited in the application. As a candidate in the By Election he has a direct and substantial interest in the matter. I ordered his joinder.

At the resumed hearing, he too was not in attendance.

[14] Mr Kanengoni, for the second and third respondent, sought to oppose the application on the basis that it was bad at law. However, the second and third respondents did not dispute that the first respondent was not, at all material times, resident in Ward 3. More specifically, they did not dispute that the first respondent neither owned nor resided at Stand 4165 Mbira Street, Nharira View, Norton. Indeed, it is only the first respondent who could have disputed that and presented countervailing evidence, if any. Since the material facts founding the application were not contested, it becomes unnecessary to discuss Mr Kanengoni's submissions. Nothing turns on those submissions.

THE ORDER

[15] It is ordered that:

1. The application is granted.
2. It is declared that the first respondent was disqualified from nomination as a candidate by operation of law in that he wilfully supplied false information to the second respondent regarding his residential status with respect to stand 4165 Mbira Street, Nharira View, Norton in that he neither resides at nor owns the same.
3. It is declared that the 1st respondent's status as a voter in Ward 3, Norton Constituency is set aside
4. It is declared that the decision by the third Respondent who presided over the nomination court on 6 February 2025 to accept the nomination of the

first Respondent as a candidate for the 8 March 2025 Ward 3, Norton Town Council (Norton Constituency) By Election violates Applicant's rights as enshrined in s 67 (1)(a) and (b) of the Constitution of Zimbabwe.

5. The nomination of the first Respondent as a candidate for the Ward 3, Norton Town Council (Norton Constituency) By Election scheduled for 8 March 2025 is set aside.
6. The second Respondent shall proceed with the By Election referred to in para 5 of this order without the candidature of the first Respondent.
7. Each party shall bear its own costs.

CHIKOWERO J :.....

Kajokoto and Company, applicants' legal practitioners.
Nyika Kanengoni and Partners, second and third respondents' legal practitioners.