ALLAN NORMAN MARKHAM
versus
THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE
and
THE ATTORNEY-GENERAL

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE, 27 May 2025 and 24 December 2025.

HCH6296/23
HIGH COURT OF ZIMBABWE
Civil Division
ISSUED
24 Dec 2025
HARARE
JUDICIAL SERVICE COMMISSION

A Muchadehama, for the applicant
J Shumba, for the respondents

Court Application in terms of section 85 (1) (d) of the Constitution of Zimbabwe

TAKUVA J: This is a court application made in terms of section 85 (1) (d) of the Constitution of a Zimbabwe. The applicant seeks the following order;

1. That the instant Application succeeds.
2. The 1st Respondent's failure to publicise the report on the commission of the inquiry into the matter of the sale of State Land in and around urban areas since 2005 violates the rights of the public to have access to any information held by the state or by any institution or agency of government as stipulated in terms of Section 62 of the Constitution of Zimbabwe.
3. The 1st Respondent's failure to publicise the report on the Commission of inquiry into the matter of sale of State Land in and around urban areas since 2005 is not consistent with the values of the nation as enshrined in section 3 (2) (g) of the Constitution of Zimbabwe.
4. 1st Respondent shall publish the report on the Commission of Inquiry into the matter of sale of State Land in and around urban areas since 2005 within ninety (90) days of the handing down of this judgement|"

Background Facts

The Applicant is a citizen of Zimbabwe and the duly elected Member of Parliament for Harare East Constituency. He brings this application in terms of section 85 (1) (d) of the Constitution of Zimbabwe, which entitles any person acting in the public interest to approach

the courts alleging an infringement or threatened infringement of a fundamental right or freedom enshrined in the Constitution.

The 1st Respondent is the President of the Republic of Zimbabwe, cited in his official capacity as the appointing authority of the Commission of Inquiry into the sale of State Land in and around urban areas since 2005 established in terms of section 2 (1) of the Commissions of Inquiry Act [Chapter 10:07] through Statutory Instrument 11 of 2018. The 2nd Responded is the Attorney-General of Zimbabwe, cited in her official capacity as the Chief Legal Adviser to the Government in terms of section 114 (4) of the Constitution.

On 1 February 2018, the 1st Respondent appointed the Uchena Commission, chaired by Honourable Mr Justice Tendai Uchena JA to investigate the sale and allocation and State Land in and around urban arears since 2005. The Commission's establishment followed an upsurge in illegal land transactions and unregulated urban settlements by land developers and cooperatives commonly referred to as land barons who were accused of selling State Land without authority, often leading to double sales, loss of money by home seekers, and destruction of illegally built structures.

The terms of reference of the Commission included, among other things, identifying all State Land allocated for urban development since 2005, determining its ownership and use, investigating methods of acquisition and allocation, identifying actors involved, and making appropriate findings and recommendations to the President.

The Commission conducted hearings and field visits in all ten provinces of Zimbabwe. It submitted its final report to the President on 9 December 2019, in compliance with section 7 (c) of the Commission of Inquiry Act and paragraph F (vi) of Statutory Instrument 102 of 2017. Despite this, the report has not been made public.

APPLICANT'S CASE

The Applicant avers that the report contains damning findings regarding the large-scale illegal sale and development of State Land, financial prejudice to the State amounting to approximately USD 2.97 billion, and the role of individuals and institutions. He contends that the withholding of the report undermines public accountability and prevents citizens from understanding the extent of corruption, maladministration, and loss of public resources.

The Applicant further states that he has, since 2019, persistently sought the publication of the report through Parliamentary questions, petitions, and formal correspondence to the President and relevant Ministers, all of which have gone unanswered. He argues that the continued non-disclosure of the report violates the public's constitutional right to access information held by the State as guaranteed under section 62 (1) of the Constitution, as well as the founding values and principles of transparency, justice, accountability, and responsiveness enshrined in section 3 (2)(g).

The Applicant therefore seeks an order declaring unconstitutional the 1st Respondent's failure to release the Uchena Commission Report, and compelling the 1st Respondent to publish the report within sixty (60) days of the court's judgement.

FIRST AND SECOND RESPONDENTS CASE.

The application was opposed by the 1st and 2nd Respondents through a notice of opposition and heads of argument. The grounds for opposition are set out in the founding affidavits as follows:

a) Applicant is wrong in assuming that section 62 of the Constitution creates a duty on 1st Respondent to publish reports such as that of the Uchena Commission.
b) Paragraph 26 of the Founding Affidavit which summarises Applicant's cause of action fails to show evidence of any violation of the right of the public to access information held by the State. In other words, Applicant has failed to show any evidence of how the rights protected under section 62 have been violated by their absence of publication.
c) Applicant is therefore non-suited to bring this application under section 85 (1) (d) of the Constitution.

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d) Access to information does not include publication in that citizens and the media can have access to information in the possession of the State without such information being necessarily published.

e) Section 62 (4) contains limitations to the right of access. These limitations presuppose the prior making of a request to access the information that is required. Applicant has never made a request for access to information in the Uchena Commission Report.

f) The report is investigative in nature and may contain unproven allegations of serious nature against other persons which may be of a criminal or delictual nature. Therefore, a premature publication of such a report may expose 1st Respondent and the authors of the report to various legal suits. Further, a blanket publication of such a report may result in a violation of other people's rights, notably the right to privacy, the presumption of innocence and even the right to dignity and administrative justice.

g) Section 7(c) and (d) of the Commission of Inquiries Act is prescriptive and does not compel the Commission thereby established to pretend its report to the public or to Parliament or even to publish it. Accordingly, the failure to publish the report is not in violation of any law or section 62 of the Constitution.

h) Since 2019 after presentation of the report to the 1st Respondent, several members of the public have been furnished with relevant information pertaining to their request to the extent that such information was not covered by the limitations referred to in section 62 (4) of the Constitution.

Issues for determination

1. Whether the 1st Respondent's failure or refusal to release the Report of the Commission of Inquiry into the sale of State Land in and around urban areas since 2005 constitutes a violation of the public's constitutional right to access information held by the State as guaranteed under section 62 (1) of the Constitution of Zimbabwe.
2. Whether the continued non-disclosure of the Commission's Report is inconsistent with the founding values and principles of good governance, particularly transparency, justice, accountability and responsiveness, as set out in section 3 (2) (g) of the Constitution.
3. Whether the court may grant an order compelling the 1st Respondent to publish the Report within a specified period, and if so, what the appropriate relief should be.

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Application of the law to the facts

This application has been brought in terms of section 85 (1) (d) of the Constitution of Zimbabwe, 2013. The provision empowers any person acting in the public interest to approach a court alleging that a fundamental right or freedom enshrined in the Declaration of Rights has been, is being, or is likely to be infringed. In this regard the Applicant acts not in pursuit of a private or personal claim, but in the broader public interest to vindicate constitutional rights and ensure adherence to constitutional norms and values. The court is thus properly seized with jurisdiction to entertain this matter in terms of section 85 of the Constitution.

Firstly, Section 62 (1) of the Constitution stipulates as follows:

"Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of the public accountability."

This right is one of the pillars of constitutional democracy and good governance, intended to promote transparency and accountability in the conduct of public affairs. It ensures that the State, as a custodian of public power and resources, remains answerable to the citizens.

Miss Shumba for the Respondents in her submissions stated that the report was made available only to "some" stakeholders. The court is not too sure as to what criteria was used to choose which specific stakeholders were entitled to receive the report while others were left out if the report is said to be complete. This procedure clearly does not reflect the transparency stipulated by our Constitution.

The evidence before the court shows that the Uchena Commission Report was completed and submitted to the 1st Respondent in December 2019, but has not been released to the public to date. The Report concerns the sale and allocation of State Land, which is public property, and the findings relate to potential corruption, abuse of office, and loss of State revenue estimated at nearly USD 3 billion. Such information clearly falls within the ambit of "information required in the interests of public accountability" as contemplated by section 62 (1).

The court is satisfied that the continued withholding of this report constitutes a violation of the constitutional right to access information. The right under section 62 is not discretionary it is a direct and enforceable entitlement that binds all State institutions.

To add on, Section 3 (2) (g) of the Constitution lists as one of the founding values and principles of the State the notions of transparency, justice, accountability and responsiveness. These principles are binding on all arms of the State and form the moral and constitutional framework for good governance. The failure to make public a report of such national importance conveys opacity rather than transparency and secrecy rather than accountability, and silence rather than responsiveness. The court thus finds that the non-disclosure of the Uchena Commission Report is inconsistent with section 3 (2) (g) of the Constitution and offends the principles of good governance that underpin the Republic. I therefore have to agree with the applicant and emphasize the principle highlighted in the case of *Phillips v Nova Scotia,* a Canadian Supreme Court case where CORY J held that;

"One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover 'the truth'…. In terms of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem. Both the status and high public respect for the Commissioner and the open and the public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public"

The court's powers under section 175 (6) (b) of the Constitution allow it to issue appropriate, just and equitable orders when constitutional rights have been violated. The relief sought by the Applicant, a declaration of unconstitutionality and an order compelling publication within a specified period is both necessary and the proportionate to vindicate the rights in question. Compelling the publication of the report within a fixed timeframe serves not only to vindicate the Applicant's and the public's right to access information but also to restore confidence in the principles of accountability and transparency upon which the Constitution is founded.

Disposition

In the result, the court finds that the Applicant has established a clear violation of the constitutional right to access information as protected under section 62 (1) of the Constitutional, as well as a breach of the founding values of transparency, accountability, justice, and responsiveness enshrined in section 3 (2) (g). The withholding of the Uchena Commission Report undermines public accountability and erodes confidence in the institutions of governance. The Respondents, as custodians of State power, are constitutionally obliged to

act with openness and transparency in matters of public interest. Accordingly, the court is satisfied that this is a proper case to grant the declaratory and mandatory relief sought in order to vindicate constitutional rights and to promote the principles of good governance.

Accordingly, it is ordered that;

1. That the instant Application succeeds.
2. The 1st Respondent's failure to publicise the report on the Commission of inquiry into the matter of sale of State Land in and around urban areas since 2005 violates the rights of the public to have access to any information held by the state or by any institution or agency of government as stipulated in terms of the section 62 of the Constitution of Zimbabwe.
3. The 1st Respondent's failure to publicise the report on the Commission of inquiry into the matter of sale of State Land in and around urban areas since 2005 is not consistent with the values of the nation as enshrined in section 3 (2) (g) of the Constitution of Zimbabwe.
4. The 1st Respondent is hereby ordered and directed to publish and make accessible to the public the report of the Commission of Inquiry into the sale of State Land in and around urban areas since 2005 within ninety (90) days of the date of this judgement.
5. There shall be no order as to costs.

TAKUVA J.....

Mbidzo, Muchadehama & Makoni, applicant's legal practitioners
Civil Division of the Attorney General, respondents' legal practitioners

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