WALTER MAGAYA
versus
LINCOLIN MUTASA
and
ELECTORAL COMMITTEE OF THE ZIMBABWE
FOOTBALL ASSOCIATION
and
ZIMBABWE FOOTBALL ASSOCIATION NORMALISATION COMMITTEE

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 9, 17 and 24 January 2025

Combined opposed urgent and court application

T Mpofu with E Chatambudza and T Makamure, for the applicant
L Madhuku with C W Gumiro, for the respondents

CHITAPI J: This judgment disposes of case numbers HCH 5885/24 and HCH 13/25. The applicant and the respondents are common in the two cases. The applicant is Walter Magaya who described himself in both cases as a "renowned Minister of the Gospel and a passionate football enthusiast" who has "proudly supported local football serving as a dedicated benefactor to the support." This was rightfully not disputed because the applicants CV is pregnant with proof of financial and logistic support which he has given to the game. The first respondent is Lincolin Mutasa cited in his official capacity as the chairperson of the Zimbabwe Football Association (ZIFA) Normalisation Committee.

The second respondent is the Electoral Committee of the Zimbabwe Football Association described by the applicant as the Committee empowered to "organise and run election (sic) within ZIFA in terms of the Electoral Code of Zimbabwe Football Association 2024." It is the Committee that the applicant claims to have disqualified him from contesting in the ZIFA Executive Committee Elections. The applicant had filed his nomination papers to contest for the position of President of ZIFA.

The third respondent, the Zimbabwe Football Association (ZIFA) Normalisation Committee was described as a "Temporary Football Association duly established and recognised in terms of the law to do the work of the Zimbabwe Football Association. It was described as the entity which acted as the ZIFA Electoral Committee in terms Article 85(a) of the ZIFA Statutes.

I diversify observe that the manner of pleading the description of the parties lacks precision. In pleading a case in court pleadings, it is important for the applicant to plead facts which show the legal status and capacity of the applicant to sue as the well as the legal capacity of the respondents to be sued. For example, it would be proper to at least allege that the applicant is an adult male or female person as the case may be if he or she is a natural in the case juristic bodies to so describe them. The applicant should also allege the juristic status of the respondent. The applicant did not plead the legal or juristic statuses of the respondents. As an observation, it occurs to me that r 59(1) of the High Court Rules 2021 which provides that a court application shall be in form 23 and be supported by one or more affidavits may need to be tweaked or improved to provide for a requirement that the status and capacity of parties to sue or be sued should be pleaded. This is not something novel because rr 12 and 13 which provide for a summons and a declaration respectively are elaborate on stating matters to be pleaded in those pleadings. The matters include the requirements that full descriptions of the party suing and of the party being sued as well as the capacities in which they sue or are sued are matters be specially pleaded. The applicant in this application in settling his papers by his counsel did badly in this regard. It was not surprising that the respondents took points *in limine* which included the issue of the legal statuses of the Committees sued and their capacity to sue and be sued. It must have occurred to counsel that committees ordinary exist within the mother organisation. It is unusual that a committee would have a separate legal standing from the mother body.

The applicant was therefore not well advised in citing committees instead of also citing the umbrella body ZIFA since the Committees are ZIFA Committees. I have however, considered that the objection raised was compromised upon the parties agreeing to case manage the applications thus implying that the court had competent parties to litigate before it. I deal now with the background to this application.

It is common cause that the first respondent heads the third respondent. The third respondent was established by FIFA for purposes of restoring normalcy, legitimacy and good governance in ZIFA. Part of the third respondents' mandate was to ensure that undisputed elections for office bearers of ZIFA bodies are held so that the organisation is run through properly elected structures and leadership. The process of elections would include the election of the President of ZIFA. The applicant fielded his candidature for vetting and if he passed the vetting process, he would stand as a candidate amongst other candidates who would have passed the vetting process and contest for the elections on 25 January 2025. It is common cause that the applicants' candidature was rejected as communicated to him by letter dated 23 December 2024 given under the hand of the first respondent on 24 December 2024. The decision which the applicant was not happy is the reason for his coming to court for relief.

On 31 December 2025, the applicant filed this application under case No. HCH 5885/24 for review of the decision to disqualify his candidature. The applicant prayed for the following order in his raft order;

> "IT IS ORDERED THAT:
> 1. The application for review be and is hereby allowed with costs.
> 2. That the third respondents' decision whilst acting as second respondent to disqualify the applicant as a candidate for the Zimbabwe Football Association Executive Election is hereby set aside.
> 3. That the applicant be permitted to stand as a candidate for the Zimbabwe Football Association Election for the position of President to the extent that applicant shall be included on the ballot for votes within two days of this order."

The respondents filed their opposing affidavit on 3 January 2025. The opposing affidavit was deposed to by the first respondent Lincolin Mutasa who described himself in para 1 thereof as:

> "I am the first respondent herein. I am the Chairperson of the second and third respondent and as such I am authorised to depose to the contents of this affidavit for and on behalf of the second and third respondents. The fact (sic) deposed to herein are within my personal knowledge and to the best of my belief true and correct…"

The deponent to the affidavit then went on to respond to the substance of the applicants' papers. The opposition included the taking of points *in limine* and on the merits.

The applicant followed up this review application with an urgent application for stay of the impending elections slated for 25 January 2025 pending the determination of this application. The urgent chamber application was accepted by the court under case No HCH 13/25. The application was allocated to me to deal with. It was set down on 9 January, 2025. On that day, there was no appearance by the respondents. The applicant was also not present save for his legal counsel *Advocate Mapuranga* assisted by the applicant's legal practitioner Mr *Makamure*. I raised the issue of certificates of service of the hearing notices as well as of the application itself upon the respondents. It also did not make sense that the respondents who had immediately opposed this application upon being served would ignore the urgent application, yet its grant would result in a relief which would render this review application redundant or superfluous. The applicant's counsel agreed to deal with fresh service of the application and notice of set down. I then postponed the hearing of that urgent application to 14 January, 2025 and ordered that the notice of set down of the postponed hearing be properly served.

On 14 January, 2025 the parties being all present engaged in a case management. Resultantly it was noted that the real issue which the applicant wanted the court to engage was this review application. If as it was then agreed, this application could be heard under accelerated time lines, Case No. HC 13/25 would fall away because it was intended to protect this application from being rendered a *brutum fulmen* if the elections were to be held before its determination. Parties agreed that this applicant be fast tracked and heard as it constituted the real dispute requiring the court's resolution. Parties agreed on curtailed time limits for filing further documents with the result that Case No. HC 13/25 was rendered inconsequential. Parties agreed that Case No. HC 13/25 be determined at this time as this application. None of the parties understandably advanced any arguments in respect of it at the hearing of this application. Before judgment the court asked the parties to consider and agree on the fate of Case No. HC 13/25. It was agreed by counsel that an order by consent that the application is withdrawn with no order as to costs should be endorsed as the disposal order of the application.

In the main application, the applicant in seeking a review of the decision to disqualify from contesting the elections listed the following grounds;

"1. The 3rd respondent's decision, whilst acting as the 2nd respondent to, which was communicated by the 1st respondent to disqualify the applicant owing to his non-submission of Ordinary Level Certificates on the basis of a flawed construction of Article 38(7) of the Statutes of the Zimbabwe Football Association, 2024 is grossly unreasonable in its defiance of logic that no reasonable man applying his mind to the facts and law attendant to it would have reached such a decision.
2. By persisting with the sole requirement for ordinary level certification without considering equivalent (or better) qualifications, as mandated by the Statutes of the Zimbabwe Football Association, 2024, the 3rd respondent whilst acting as the 2nd respondent created a new eligibility criterion that was not required if regard is had to the Electoral Code of the Zimbabwe Football Association 2024 and Statutes of the Zimbabwe Football Association 2024 which was grossly irregular and resulted in a grossly unreasonable decision that defies logic to the extent that no reasonable man applying his mind to the facts and law attendant to it would have reached such a decision.
3. In circumstances where the 3rd respondent whilst acting as the 2nd respondent refused to recognize the appellant's higher qualifications, by failing to inform the appellant in writing that additional documents were required as mandated by Article 8(3) of the Electoral Code of the Zimbabwe Football Association 2024, the 2nd respondent grossly erred procedurally and caused a gross irregularity by denying the appellant an opportunity to rectify any perceived deficiencies in his application."

The manner in which the grounds are expressed consist of too much verbiage grounds of review just like grounds of review must be clear and concisely.

In paragraph 5 of his founding affidavit the applicant averred as follows:

> "This is an application seeking an order for Review in respect of the 3rd respondent, acting as 2nd respondent per the letter dated 23rd December 2024, which was communicated by 1st respondent in respect of my disqualification from competing in the ZIFA Executive Committee Elections slated for January 2025. The decision that I wish to review (sic) is attached thereto marked as Annexure WMI which letter I received on 24th December, 2024 after writing to ZIFA on 23rd December, 2024 requesting for reasons for my disqualification pursuant to a press release by the 3rd respondent."

The applicant deposed in para 6 of his affidavit that his application was based on the provisions in terms of ss 26 and 27 of the High Court Act [*Chapter 7:06*] as read with s 4 of the Administrative Justice Act [*Chapter 10:28*] and Rules 62 of the High Court Rules 2021. The propriety of the reference to two distinct statutes as a basis for this application was an issue objected to by the respondents counsel and will be dealt with later.

It is convenient at this stage to refer to the decision which the court is asked to review. The letter given under the hand of the first respondent communicated the decision as follows:

"23 December 2024

Dear Mr. Walter Magaya

Re: Notification of Integrity Check Results for ZIFA Executive Committee Elections

I regret to inform you that following the integrity checks required for candidacy in the upcoming Zimbabwe Football Association (ZIFA) Executive Committee elections, it has been determined that you have not met the necessary criteria to proceed as a candidate. Specifically, this pertains to the non-submission of your Ordinary Level Certificates.

We understand that this news may be disappointing. The integrity checks are a crucial part of our commitment to upholding the highest standards of ethical conduct within our organization. This process is essential for fostering trust and transparency in our operations and ensuring that all candidates meet the rigorous standards expected by the football community.

We encourage you to remain engaged with ZIFA and continue to contribute to the development of football in Zimbabwe. Should you have any questions regarding the integrity check process or require further information, please to do not hesitate to contact us.
Should you rush to appeal please kindly note the process is outlined in Article 85(9) of the ZIFA Statutes.
Thank you for your understanding and continued support

Yours sincerely

Linwln C. Mutasa

Chairman – ZIFA Electoral Committee.

In relation to the process leading to the elections the applicant in para 9 of the founding affidavit nomination described how he went about the process as follows:

"9 In November 2024, following a prolonged period of purported governance challenges and the establishment of the ZIFA Normalisation Committee, the 3rd respondent issued a call for Executive committee nominations. The move was part of an effort to restore stability and legitimacy within the Zimbabwe Football Association (ZIFA). Recognizing the importance of this electoral process, I like other presidential aspirants submitted my candidacy documents on 11 November 2024 committing to contribute to the revitalization of football governance in Zimbabwe. See attached copies of my documents attached hereto and marked as Annexure WMZ series. I hasten to point out that Annexure WMZ series was informed by the provisions of Article 38(7) of the ZIFA Statutes 2024 which deal with educational requirements for candidates and I over that I duly submitted the following documents with the second respondent.

9.1 Detailed copy of my curriculum Vitae

9.2 Higher Certificate in Marketing, University of South Africa (Unisa) 2011.

9.3 National Diploma in Marketing, University of South Africa (Unisa), 2015

9.4 Higher Certificate in Theology, University South Africa (UNISA), 2019 (cum laude)

> See Annexure WMZ Series, for ease of reference. I have also attached a copy of the ZIFA Statutes as Annexure WM3"
>
> For context, s 38(7) of the ZIFA Statutes which the applicant makes reference to reads as follows:
>
> "38(7)
> The President and the two Vice Presidents of the Executive Committee shall have passed a minimum of five O – levels subject (Education level) or any equivalent education level."

This section is the principal bone of contention in this application and shall be discussed in due time. It is however observed for the avoidance of doubt that a consideration of the supporting documents listed by the applicant shows no reference or mention of an O- level education. A consideration of the applicants curriculum vitae similarly does contain any reference to an O- level qualification.

In relation to the applicant's specific bone of contention, he set it out in para 12 of his founding affidavit as follow:

> "The following day on 24 December, 2024 I received a back dated letter from the second respondent dated 23 December, 2024 authored and signed by the first respondent. This letter informed me of my purported disqualification from the ZIFA Executive Committee elections, citing the sole reason that I had not met the necessary Criteria to proceed as candidate "specifically regarding the alleged non-submission of my Ordinary level Certificate. I have attached a copy of that letter as Annexure WMI. For reasons that will be elaborated herein below, I took great exception to my disqualification as I very much believe that I possess the requisite qualifications to compete and vie to be elected ZIFA President together with other Presidential hopefuls"

It must be observed at this juncture that simply put, the applicant contends that although he did not submit O level certificates, he nonetheless possessed "requisite qualifications to compete" in the elections. The issue of holding requisite qualifications other than the unsubmitted O level certificates and whether such requisite qualification met the criteria for candidature is really the pith of this application.

The applicant contended that he did not enjoy Christmas because he was frantically making efforts to have his rejected candidacy resuscitated. In that regard his legal practitioner who appears not to have enjoyed Christmas either wrote on Christmas day, 25 December, 2024 a letter to the third respondent. It is a six paged letter which in summary highlighted that:

(a) ZIFA was an administrator body and was as such required to act "lawfully reasonably and fairly."

(h) ZIFA had abrogated that duty to act lawfully reasonably and fairly.

(e) As he stated in paragraphs 4 and 5 of the letter:

> "while the requirement itself for proof of five Ordinary level subjects is questionable, the interpretation applied was grossly incorrect and fundamentally flawed, if any allowed interpretation at law were to be considered. The key requirements affecting our client is in Article 38(7) of the Statutes of Zimbabwe Football Association 2024 [hereafter ZIFA Statutes 2024] which provides that:
> "The President and the two vice Presidents of the Executive Committee shall have passed a minimum of five O level (education Level) or any equivalent educational level." (own emphasis)
>
> "5. What is apparent from the above is that the minimum requirement was five O level subjects (or better). He exceeds it having provided the following essential qualifications.
> 5.1 Higher Certificate in Marketing University of South Africa [UNISA] 2011
> 5.2 National Diploma in Marketing University of South Africa [UNISA] 2015
> 5. 3 Higher Certificate in Theology University of South Africa [UNISA] 2019 (cum laude)
> 6. As these qualifications clearly fall within the scope of Article 38(7) of the ZIFA Statutes 2024 as they present an equivalent qualification see Annexure WMZ series
> 7. In view of the above it would be absurd and grossly unreasonable to conclude that our client did not meet the necessary criteria solely because he is overqualified. As we have already demonstrated above, it is impossible that our client cannot be deemed underqualified according to Article 38(7), which does not sorely confine itself to five O level subjects."

(d) The current National Qualifications frame work reorganized the applicants' qualifications as superior to O level qualification which are merely foundational.

(e) section 7(2) of the Electoral Code Provides as follows:

> "The Electoral committee shall not impose any eligibility criteria that are not provided from the Statutes of ZIFA or any other formal requirements that are not provided from this Electoral Committee shall only request the documents that held (s) established where the relevant criteria have been fulfilled."

(f) That the applicant had dis regarded Article 8 (3) of the Electoral Code which states

> "Within seven (7) days of the deadline for submission of the candidates, the Electoral Committee shall inform in writing those candidates also have failed to produce all relevant documents in support of their candidatures and grant them another seven (7) days to complete their applications deadline their candidatures shall be declared invalid."

(g) As per paragraph 16 of the letter

> "In conclusion our client is fully aware of his rights including those articulated in Article 85 (9) of the ZIFA statutes and he is prepared to explore every available avenue to testify this injustice"

The above summations constituted the applicants demands per the letter from the applicants legal practitioners. The letter was not respondend to according to the applicant. The applicant also averred in para 29 of his founding affidavit that the second respondent has procedurally failed to inform him that additional documents were required as mandated by Article

8 (3) of the Electoral Code. It also alleged that the respondents conduct was discriminatory and breached s 68 of the Constitution which provides for administrative conduct to be lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair as also then provided for in s 3 (1) of the Administrative Justice Act [*Chapter 10:28*].

The applicant justified his approach to this court despite having lodged an appeal with the Court of Arbitration for Sport (CAS) by stating that the route presented its challenges. He also noted that there were no appeal structures within ZIFA and that in any event the decision which he was aggrieved by was made by the second respondent sitting as the third respondent. It was improper in the complication the applicants' view for the appeal to be dealt with by the same body who is a respondent.

The respondents opposed the application on various grounds starting with points *in limine.* The first point made was that the applicant had not cited the ZIFA Ethics Committee yet it was the one which conducted the integrity check. I did not find this objection to have substance because the legal status of that Ethics Committee is that it is a separately ZIFA body with ZIFA represented by the normalization committee. The objection in my view was taken in terrorism because ZIFA ethics or any other committees are the working organs of ZIFA or the normalization committee as the case may be. For the same ZIFA to then say sue my committee is with due deference nonsensical. Who is ZIFA anyway if not a juristic body which operates through individuals who may be constituted into committees and whatever decisions made by them are ZIFA decisions or unless it distances itself from the decisions.

There was also objection that the applicant had not cited the mother body ZIFA. It was alleged that as the entity which conducts the election, ZIFA ought to have been cited. It was averred that the non-citation of ZIFA was fatal to the application. It was also averred that the second and third respondents were only committees of ZIFA. It appeared to me that the issues raised here were not *bona fide*. They were raised for the sake of it. Their pursuit is not conducive to advancing the finalization of the dispute but to throw spanners in the matter and prolong the dispute determination. The courts are loathe to legal practitioners who take objections for the simple sake of it or to defeat the determination of a matter. It is common cause that ZIFA currently acts through the normalization Committee chaired by the first respondent. It is clear that the parties are aware

that the normalization committee is the face of ZIFA. It is ZIFA in court. That much is clear that the dispute *in casu* pits the applicant against ZIFA. The semantics of references to a normalization Committee instead of ZIFA is really an issue which respondents and the applicant could have simply agreed to revisit how best to describe the third respondent. Whilst I have pointed out that committees to do not ordinarily enjoy separate legal standing from the mother juristic entity the situation within ZIFA is unique in that its functions are administered by the third respondent led by the first respondent. This has caused confusion. I have no doubt that parties are clear on who is litigating in this application and no prejudice or inability to defend on the part of the respondents has been alleged or established

In their oral submissions and heads of argument counsel did not advance the issue of the legal incompetence of the respondents. However, the applicant did not abandon the objection. It is necessary for the court to speak in on them nonetheless. They are objections which should in the circumstances of this case not have been raised.

The respondents objected to the jurisdiction of this court to entertain the matter. Paragraph 6 of the opposing affidavit was coined as follows:

> "The High Court does not have jurisdiction to entertain this matter. The ZIFA statutes Article 65 clearly outs the jurisdiction of any ordinary court in the resolution of disputes affecting ZIFA. The election in issue is to be done by ZIFA for ZIFA. The contestants are officials of ZIFA any dispute arising between ZIFA and its officials shall be settled in accordance with the ZIFA statutes and not through the ordinary courts."

The objection has no substance. The use of the words "ordinary courts" is perplexing. Maybe the applicant intended to say formal court system. It must be taken as a given that every legal practitioner appreciates that the High Court and above it the Supreme and Constitutional Courts are superior courts. In the case of the High Court, it enjoys original and unlimited criminal and civil jurisdiction over all matters in Zimbabwe except matters which are expressly excluded by statute and those Constitutional matters in which its jurisdiction is excluded. It follows that whilst ZIFA and its affiliates and members may covenant not to take each other to court on football matters, this does not oust the High Court jurisdiction should a football matter be brought to court. It is also important to note that once the court renders a decision, then subject to other avenues

including appeal which the person against who judgment is made may pursue, that order of court must be obeyed as provided for in S 164(3) which states:

> "An order or decision of a court bonds the state and all persons and government institutions and agencies to which it applies and must be obeyed by them."

It is in any event public knowledge that the courts have dealt with many football matters in its history. It is surprising that ZIFA which is aware of and has participated in football cases challenges raises this point. If it was intended to fish the waters then unfortunately, the waters and the fish in them have not changed. The objection falls.

Counsel for the respondents then raised a point *in limine* for which no prior notice was given. He submitted that the application was fatally defective because it cited two distinct processes on which the applicant relied for relief. Counsel submitted that the applicant could not seek a review based on ss 26 and 27 of the High Court and in the same breath combine that with reliance on s 4 of the Administrative Justice Act. Counsel submitted that a litigant who petitions the court must if the *lis* is based on a statute cite the relevant statute and specific rule or section relied upon. I agree that this is ideal and makes it easier for the court to appreciate the particular law which it must focus on to resolve the application. I am not however aware of a rule in the rules of the High Court that provides specifically that there is an obligation placed upon a litigant to quote the particular section on which reliance is placed as a basis for an application. My view is that it has become a rule of practice. The practice must be followed. As a practice rule it means the court decides to strike a matter off the roll for non compliance guided by the circumstances of each case including prejudice to the other party. In *casu*, no prejudice was raised. The approach I adopt is to consider the whole application and grounds advanced for seeking the court's intervention. The application clearly lists the grounds of review. These are the grounds which the court will decide on without being confused by the confusion of the applicants' in citing section from two Acts. The application will not be struck off the roll on this ground.

The next point again taken by the respondent's counsel without notice was that ZIFA was not an administrative authority and that its affairs were not subject to review by his court. Consequent on that submission, the further submission was made that its decisions were private. Section 26 of the High Court provides that:

> "26. **Power to review proceedings and decisions subject to this Act and any other law**
> The High Court shall have power, jurisdiction and authority to review all proceedings and decisions of all inferior courts of justice, tribunals and administrative authorities within Zimbabwe"

The word administrative authority is not defined in the High Court Act. Counsel for the respondents appears to have relied on the definition of administrative authority given in the Administrative Justice Act. That definition shows that administrative authorities are those which exercise public power and are created by statute and include persons exercising such powers. I have already indicated that I will be guided by the grounds of review alleged and the relief sought. The relief sought is the setting aside of the applicant's disqualification and an order declaring that the applicant is duly qualified to and is free to stand as a Presidential Candidate in the scheduled elections in issue. Such decision can be given if one acts in terms of the High Court Act which does not confine the definition of administrative authority restrictively. It was also not disputed by counsel that the superior courts had dealt with numerous cases wherein the conduct of ZIFA was brought on review. There would have to be compelling reasons for the court to refuse to exercise its powers of review of the conduct of ZIFA in the light of it having invariably done so.

The last point *in limine* was that the applicant ought to have exhausted domestic remedies in the form of arbitration as provided for in the Statutes of ZIFA. Counsel submitted that the court should defer to football bodies dealing with their own matters. This point is already answered. The High Court's jurisdiction is unlimited save for limitations imposed by law. The court as already noted had always entertained football disputes. It remains up to the bodies politics concerned to deal with their constituent members who will have taken football matters to court. This court cannot be barred in the exercise of its jurisdiction in the circumstances of this case. In any event in light of the fact that ZIFA is run by a normalization committee, it was not alleged that the institute to arbitrate the matter was functional and ready to deal with the matter.

Dealing with the merits of the review, in relation to the first ground that the decision to disqualify the applicant for non-submission of O – Level certificates was a flawed construction of Article 38(7) and grossly unreasonable and illogical to the point that no reasonable person applying his or her mind to the facts would have reached the decision to disqualify the applicant, it was submitted by counsel for the applicant that the vetting authority only considered the non-submission of O – Level certificate and not the alternative consideration of whether the applicant

held qualifications equivalent to O – Level. It was submitted that the applicant held more than the equivalent because he held diplomas which have already been alluded to. Secondly it was averred in any event that the applicant ought to have been advised that his produced qualifications did not equal to the equivalent. Counsel submitted that the issue of whether the applicant's diploma qualifications equaled to O levels was not an issue needing to be addressed at this juncture because the decision to disqualify the applicant must be held to be flawed on account of the failure by the vetting authority to deal with the issue. It was argued that this court cannot act as the vetting committee. Counsel argued further that the O – level requirement was the minimum and that for the vetting committee to have disqualified the applicant in the face of the diplomas meant that the committee considered him to be overqualified.

Applicant's counsel further argued that the decision to disqualify the applicant was made in circumstances where the applicant was denied his right to be given seven (7) days to produce all documents. It was argued that giving time to the applicant would enable him to engage with the vetting authority and rectify his papers.

The applicant has however remained coy with disclosure on what exactly he would need to present to the vetting committee. It is my view that the applicant needs to be candid and take the court into his confidence. It is still not clear as to whether the applicant holds an O – Level certificate. He did not produce any evidence to show that the diplomas equal to or are above O – Level. Even if the court does not determine the issue of the equivalence or over qualification of the applicant, at least according to the applicant's submissions this court should have an insight into the matters which the applicant requires to have interrogated by the vetting committee. The issue cannot just be resolved by a prayer for a simple setting aside of the decision and leaving the matter at that.

The powers of the High Court on review as set out in section 28 of the High Court Act are expressed as follows:

> **"28 Power to review proceedings and decisions**
> On a review of any proceedings or decision, other than criminal proceedings, the High Court may subject to any other law, set aside or correct the proceedings or decision."

It is therefore ill advised for an applicant to be coy with the facts because the court's powers go beyond a setting aside. A decision can be corrected. That implies that if for example the applicant was in fact the holder of an O – level certificate and produced it in his affidavit the court can properly correct the decision and qualify the applicant. The applicant ought in this application to have provided some evidence of the relationship between O-levels and the UNISA diplomas. He was not properly advised not to disclose or provide such information or facts. During the hearing the court asked the applicant's counsel to advise the court whether or not the applicant held an O-level certificate and if so whether he could produce it. The response was that counsel's brief ended with what was contained in the four corners of the record and he had no instructions to comment on that. My view is that the applicant was obliged to outline that which he intended to place before the vetting committee outside of what he initially placed before it and on which it disqualified him. The court would then consider whether to set aside the decision and remit it for a *denovo* vetting or to correct the decision made. Essentially, when the court is given information from which it considers that it is placed in a position to make necessary corrections without remittal the court will do that itself. In casu, the question that remains is, if the decision is set aside and a denovo vetting ordered what facts other than the ones previously placed before the vetting authority of first instance will be placed before the *denovo* committee as would change the position that the applicant does not qualify in terms of the criteria.

The same applies for the point that the applicant ought to have been given seven days notice to remedy his position or engage. He again leaves it at that and does not give any hint on what he proposes to produce to the vetting committee. In my view the court does not just set aside a decision and remit the matter for a *denovo* simply because the applicant was not granted a notice to remedy his papers. The applicant should be open and say this is what l wanted to do or these are the documents l would have produced had I been granted the seven days notice. When the court asked his counsel whether the applicant required the seven day notice, counsel respondent that he only wanted the setting aside of the decision.

It was also submitted that there had been a conversation between the first respondent and the applicant wherein it is alleged that the first respondent advised the applicant that his disqualification had not been motivated by the failure to submit O – level certificate but that he

was disqualified on the grounds and allegations that he was involved in some criminality which he was never found guilty of. It was averred that the allegation in the answering affidavit was not refuted by the first respondent. The applicant may well have conversed with the first respondent. That is not the point. The point is that he was disqualified in a completed process which an only be set if the applicant establishes that the decision to disqualify could not have been reached by a reasonable person for its defiance of logic and common sense. The decision must be grossly unreasonable and punctuated by an irregularity that should be established also.

The respondents' counsel submitted that all said and done, the crux of the matter was whether or not the applicant possessed O-level (education level) or its equivalent. The issue was not that the candidate must hold the O level qualifications as a minimum with a higher qualification obviating the need to hold O levels. The issue was whether the applicant possessed the O level qualification or its equivalent. Counsel argued that an equivalent did not mean higher level than O level. I agree with this exposition.

Counsel submitted that O-levels were attained after one has gone through secondary school and written examinations from which a certificate is issued. It is of course not always so that one needs to be in formal school. What is correct is that O – levels involve a study of the O –Level curriculum and sitting for O – Leve examinations. A certificate evidencing sitting for O – level subjects and the result therefore is recorded. The requirement to have five O – Levels or their equivalent must be met. The fact that one holds a degree which is a higher qualification does not unless the requirement is amended in the ZIFA statutes excuse the applicant from producing an O – Level qualification or equivalent. It is incorrect as alleged by the applicant that O – Levels are a minimum qualification. The minimum refers to the number of subjects passed at O – Level which is given as five O – Levels. Thus, if a candidate has passed less than five subjects he does not qualify. What this means is that the applicant who relies on the equivalent educational level must show that the equivalent qualification is equivalent to a minimum of five O – levels passed subjects. Just for the avoidance of doubt if one relies on a diploma, the issue is not that a diploma is higher than an O – level qualification. It must be equivalent to an educational level which equals to not less than five O – level subjects passed. The applicant would be required to produce the O – level certificate or equivalent even if he or she hold a PHD. That is the spirit behind Act 38(7).

In casu, the applicant, and I repeat has been coy with disclosing the further information or evidence or facts which would in probability alter the position and decision to disqualify him. The court does not just set aside a decision for a minor omission of procedure by a body whose decision is on review but goes into the proceedings to see if they can be corrected as well. An applicant who gets an opportunity to ventilate his position but takes the stance that he only wants the court to set aside a decision because a procedural infraction and leaves it there places himself in difficulties because the court before setting aside a decision must be satisfied using logic and common sense that an invalid decision was reached. The court interferes where the impugned conduct is grossly wrong. That is not so in this case. The applicants challenge cannot succeed in the circumstances of this case. There was nothing grossly unreasonable or irregular in the decision reached to disqualify the applicant who has not done himself good by being coy with fundamental information as would likely result in a change of result. The applicant decided not to be candid with the court with information or facts other than the ones placed before the vetting committee. He has himself to blame.

I deal with the question of costs. It is my view that the challenge by the applicant was not frivolous or vexatious. It related to a on a matter of public interest. I am of the view that the appropriate order is one in which each party bears its own costs.

Accordingly, the matter is disposed of as follows

1. The application is dismissed.
2. Each party to bear its own costs.
3. For the avoidance of doubt case No. HC 13/25 is by consent withdrawn with no order of costs.

Rubaya and Chatambudza, applicant legal practitioners
Moyo, Chikono and Gumiro, respondents' legal practitioners