JUDICIAL SERVICE COMMISSION

Versus

ERICA FUNGAI NDEWERE

HIGH COURT OF ZIMBABWE
CHILIMBE J
HARARE 24 October & 9 November 2022

Interlocutory application

A. Mugandiwa for applicant
B.T. Mtetwa for respondent

CHILIMBE J

BACKGROUND

[1] Applicant is a constitutional entity responsible for the administration of the judicial service in Zimbabwe. Respondent is a former Judge of the High Court of Zimbabwe. She was removed from office on 17 June 2021 in circumstances briefly outlined below. Her removal triggered a series of legal suits[1] between respondent, applicant and various other parties related to, or associated with applicant.

[2] This duplicity in litigation is reflected in the case of another former Judge of the Supreme Court and Constitutional Court of Zimbabwe, Mr. Francis Bere. The various disputes[2] between Mr. Bere and the present applicant ("JSC) and others, are pertinent to the resolution of a preliminary point (detailed below) that has been raised by respondent. Put differently, the determination of the preliminary point depends on whether or not the same point has been considered and ruled upon by this court, the Supreme Court, as well as the Constitutional Court.

[1] See *Erica F. Ndewere v The President of Zimbabwe & 3 Ors* HH 442-22s; *Judicial Service Commission v Erica Fungai Ndewere* HH 338-22; *Erica Ndewere v The President of Zimbabwe & 4 Ors* SC 52-22; *Erica Ndewere v Judicial Service Commission* SC 113-22, among others. To avoid confusion, I will endeavour to distinguish the various cases whenever reference to such arises, by full citation, judgment numbers, the deciding Court or presiding Judge.

[2]) See *Bere v JSC & 7 Ors* HH 269-20 per CHITAKUNYE J (as he then was); *Bere v JSC & 7 Ors* HH 510-20 per CHIKOWERO J; *Bere v JSC & 5 Ors SC 1-22* per GUVAVA JA and the Constitutional Court application of *Bere v JSC & 6 Ors* CCZ 10-22 per PATEL JCC.

[3] Whilst respondent contends that the matter of her removal from office is far from over, the JSC considers the issue concluded and final. Consistent with that position, the JSC instituted these rei *vindicatio* proceedings to recover a service vehicle which had remained in respondent`s possession following her removal. Respondent opposed the application and raised in the process, the said point *in limine* which I must now dispose. It suffices for purposes of this same interlocutory point, to refer to the summation of the background to the dispute as recorded by GUVAVA JA in one of the matters referred to above[3]; -

> "FACTS
>
> *[1]* The appellant is a former judge of the High Court. She was removed from office by the President on 17 June 2021 in terms of s 187 (8) of the Constitution of Zimbabwe, 2013 for gross misconduct. The respondent is a Commission established in terms of s 189 of the Constitution.
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> *[2]* During her tenure as a judge, the appellant was issued with a motor vehicle, namely Mercedes Benz E300 registration number ADY4743 ('the motor vehicle') as a condition of service. The motor vehicle was for personal and official use. The vehicle was registered in the name of the Master of High Court, a former department of the respondent.
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> *[3]* After her removal from office, the respondent demanded that the appellant return the motor vehicle by letter dated 19 April 2022. The appellant declined to return the motor vehicle. In her response dated 28 April 2022 the appellant stated that she would not return the motor vehicle as she was entitled to purchase it in terms of the Judges' Conditions of Service.
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> *[4]* The respondent approached the court *a quo* with an application for *rei vindicatio* [namely, the present application] for the recovery of the motor vehicle under case number HC 3117/22. The respondent was of the view that the option to purchase the motor vehicle was not available to the appellant as she was no longer a sitting judge. The respondent further averred that the motor vehicle belonged to it as it was registered in the name of Master of High Court."

THE POINT *IN LIMINE*: THE IMPUGNED RESOLUTION "ANNEXURE A"

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[3] See *Erica Ndewere v Judicial Service Commission* SC 113-22.

[4] Respondent raised the point *in limine* in her opposing affidavit and her counsel amplified same in argument. The net effect of the objection was that there was no application before the court. The objection was based on the following facts; - applicant`s founding affidavit was deposed to by Mr. Walter Chikwana, the secretary to the Judicial Service Commission ("Chikwana").

[5] Chikwana deposed that by resolution on 6 June 2019, the JSC had authorised him "…*to represent it in all litigation matters*". An extract of the resolution, attached to the founding papers as "Annexure A", reads as follows; -

> "26. RECOMMENDATION TO GIVE THE SECRETARY OF THE JUDICIAL SERVICE COMMISSION AUTHORITY TO REPRESENT THE JUDICIAL SERVICE COMMISSION IN COURT
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> After some discussion, it was agreed that the following procedure should be adopted in all litigation processes involving the JSC-
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> 1) The lawyers representing the JSC in any case should consult The Chief Justice, The Deputy Chief Justice and The Acting Secretary for the purpose of preparing pleadings.
> 2) The pleadings should be immediately communicated to all commissioners.
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> It was resolved to grant authority to The Acting Secretary to *sign documents* on behalf of the JSC *in litigation matters*."

[6] "Annexure A", embodying the JSC`s resolution, forms a central feature to the determination of the preliminary point. Respondent attacked this resolution as invalid. Which meant that Chikwana lacked the necessary imprimatur to institute these *rei vindicatio* proceedings against her on behalf of the JSC. Mrs *Mtetwa* for respondent argued that (a), "Annexure A" was a product of only two, (the Chief Justice and Deputy Chief Justice), and not all the thirteen commissioners of the JSC.

[7] It was also submitted by Mrs *Mtetwa* that (b), "Annexure A" purported to empower the same two, rather than all thirteen commissioners, to manage the litigation against respondent. Counsel challenged Chikwana to produce a resolution confirming that all the thirteen (13)

commissioners of the JSC had each authorised the institution of legal proceedings against respondent. As (c), counsel for respondent further contended that even on the face of it, "Annexure A" did not authorise Chikwana to institute proceedings, but to merely execute court documents. Counsel also stated as (d), that Chikwana had not produced any evidence, despite being challenged to do so in the opposing affidavit, that he had complied with the conditions stipulated in "Annexure A"; -namely that he furnished all pleadings filed in HC 3117/22 to each commissioner of the JSC.

[8] Finally as (e), Mrs *Mtetwa* submitted that the Chief Justice and his deputy, had also been involved in proceedings leading to respondent`s removal from office. In that respect, their participation in the meeting that issued "Annexure A" was inconsistent with the JSC`s constitutional mandate. Section 191 of Constitution of Zimbabwe ("the Constitution) obliged the JSC to conduct its "business" in a just, fair and transparent manner.

[9] I now turn to the *contra* position argued on behalf of applicant by Mr. *Mugandiwa* which as I understood them went as follows; -firstly, it was incorrect for respondent to allege that the JSC`s authority or decision to institute proceedings against respondent was tainted in any manner. The JSC`s resolution borne out in "Annexure A" was a validly procured resolution of the institution. No evidence at all had been tendered by respondent to offset this instrument`s prima facie validity. As such the court could not yield to arguments issuing from bare and unsubstantiated allegations.

[10] Secondly, apart from the authority invested in the him by the JSC`s resolution "Annexure A", Chikwana the JSC secretary enjoyed wide-ranging administrative authority. The authority derived from Chikwana`s role as "accounting officer" charged with obligation to account for and preserve the assets of the JSC. This was no tepid responsibility issuing as it did from (i) section 10 of the Judicial Services Act *[Chapter 7:18;* (ii) -section 10 of the Public Finance Management Act *[Chapter 22:19];* and (iii) -section 190 of the Constitution itself (which set out the objects of the JSC), so submitted Mr. *Mugandiwa*. In that regard, the right to institute the present proceedings to vindicate the JSC`s assets was a natural consequence of Chikwana`s responsibilities as secretary of the JSC.

[11] Thirdly, Mr. *Mugandiwa* submitted that ahead of all else, the Supreme Court had already pronounced itself on the validity of "Annexure A" [4]. On that basis, the matter was settled and this court was bound to recognise and follow the position adopted by the Supreme Court. Mrs *Mtetwa* did not dispute that point. She argued however, that the present matter carried sufficiently distinguishable circumstances which justified a departure from the position taken by the Supreme Court in *Bere v Judicial Service Commission*.

[12] Indeed, the point *in limine* can be disposed of by resolving whether or not the Supreme Court settled, for purposes of the present interlocutory point, the question of "Annexure A" `s validity. On that basis, I will not deal with the rest of the arguments raised from both sides, aside from passing commentary relevant to the determination of whether or not to depart from the Supreme Court ruling. In the first instance what exactly did the Supreme Court say about "Annexure A"?

(a) VALIDITY OF "ANNEXURE A" THE HIGH COURT RULINGS -(1) 08/04/2020 AND (2) 04/08/2020

[13] In fact the issue of "Annexure A" ` s validity did not commence in the Supreme Court. That resolution`s validity was thrice[5] questioned and twice answered in this court. This current matter represents the fourth time the issue of "Annexure A" and Chikwana`s authority is coming up for resolution in this court. "Annexure A" was first challenged in *Bere v JSC & 7 Ors* HH 269-20 [referred to hereinafter as "HH 269-20]. In that dispute, CHITAKUNYE J (as he then was) declared "Annexure A" invalid on the basis that the JSC could not delegate its constitutional functions in the process of removal of a judge from office to its secretary. The same issue was raised again in *Bere v JSC & 7 Ors* HH 510-20. On this second occasion, this court, per CHIKOWERO J, departed from its earlier decision in HH 269-20. The Learned Judge held that "Annexure A" was a validly issued resolution properly empowering Chikwana to institute proceedings, as he had done, in a matter involving the removal of a judge from office.

[4] *Bere v JSC & 5 Ors* SC 1-22.
[5] The validity of Annexure A was raised in (1) *Bere v JSC & 7 Ors* HH 269-20 per CHITAKUNYE J;(2) *Bere v JSC & 7 Ors* HH 510-20 per CHIKOWERO J, and in (3*) JSC v Erica Fungai Ndewere* HH 338-22 per DEME J -but no ruling was made on the point in the latter case.

[14] Two years later, the same question was raised for the third time before this court in *JSC v Erica Fungai Ndewere* HH 338-22. This being an urgent application filed by present applicant seeking an interim order for the preservation of the very chattel forming subject of this dispute. It appears that the issue was possibly abandoned in that application before DEME J, as no ruling on the point was made in the 14 September 2022 judgment granting the application.

[15] I may also state that although respondent applied for leave to appeal the decision of DEME J, the validity of "Annexure A" was neither raised, argued nor considered in the Supreme Court hearing. (See *Erica Ndewere v JSC* SC 113-22 per MAKONI JA).

(b) VALIDITY OF "ANNEXURE A"-THE SUPREME COURT RULING 14/01/2022

[16] I now come to the Supreme Court ruling on the matter. As stated, the Supreme Court upheld the validity of "Annexure A" in *Francis Bere v JSC & 6 Ors* SC 1-22 [SC1-22]. In doing so, the Supreme Court (a) overturned HH 269-20 on that point, (b) upheld CHIKOWERO J `s decision confirming the validity of "Annexure A" and (c) pronounced itself on the matter with some finality. In that same decision SC 1-22, the argument on this point was captured as follows on appeal [paragraph 20]; -

> "On the merits of the matter, counsel for the appellant submitted that the Acting Secretary for the first respondent had no authority to depose to the opposing affidavit. Counsel argued that the court in HH 269/20 had already determined that the Acting Secretary could not so act. The court *a quo* could not make a contrary finding that Mr Chikwana had authority to act on behalf of the first respondent."

[17] The question to be decided from the above argument was framed by the Supreme Court in the following terms; - *"whether or not the court a quo erred in finding that the acting secretary could depose to the first respondent's opposing affidavit and act on its behalf in litigation before the court a quo".* The Supreme Court reasoned as follows in answering this question; -firstly, the conflicting decisions of the High Court on the matter were reconciled by upholding the latter ruling of CHIKOWERO J confirming the validity of the JSC resolution in favour of Chikwana and overturning the contrary ruling in HH 269-20.

[18] In doing so, the Supreme Court retraced the dictum of CHIKOWERO J and approved the reasoning therein including the finding that Chikwana was "not on a frolic of his own". Secondly, the Supreme Court also made a definitive finding [in 37] that "*It is clear from the papers before the court that the Commission made its decision in terms of the Constitution".* This pronouncement relates to the issuance of "Annexure A" being the JSC`s resolution investing Chikwana with authority to institute court proceedings on its behalf.

[19] Thirdly, the Supreme Court further found that apart from the authority to represent the JSC via the confirmed resolution "Annexure A", Chikwana was also acquainted with the matters at hand and could positively advert to the facts as required by Order 32 rule 227 (4) of the Old High Rules 1971 in force at the relevant time. Fourthly and on the same plane, it was recognized that Chikwana was imbued with statutory authority in terms of sections 10 (1) and (2) of the Judicial Service Act. These provisions effectively rendered the secretary of the Judicial Service Commission as its chief executive. On that basis the institution of proceedings fell within the scope of his duties. In conclusion, the Supreme Court found that [at 39]; -

> "We are of the firm view that the first respondent's Acting Secretary clearly had authority to depose to the opposing affidavit and the court *a quo's* finding in this regard cannot be faulted."

(c) VALIDITY OF "ANNEXURE A" -THE CONSTITUTIONAL COURT RULING OF 19/10/22.

[20] Dissatisfied with the decision of the Supreme Court in *SC 1-22*, the appellant moved the Constitutional Court for leave to appeal that Supreme Court judgment on a number of constitutional grounds. In dealing with the matter, the Constitutional Court had occasion to consider, the same issue of the validity of "Annexure A". It is necessary to quote *in extenso*, the remarks of PATEL JCC [at page 14] in the constitutional application of *Francis Bere v JSC & 6 Ors* CCZ 10-22.

> "I shall proceed to consider the relevant issues that arose for determination in the High Court. The first issue relates to the representation of the JSC by its Secretary. The court considered this to be justified on the basis of s 10 (2) of the Judicial Service Act [*Chapter 7:18*] as well as r 227 of the High Court Rules, both of which provisions bestow the

> Secretary with the competence to represent the JSC. It is trite that a constitutional matter cannot arise where the impugned conduct is predicated on an unchallenged and valid statute. See *Magurure & Ors* v *Cargo Carriers International Hauliers (Pvt) Ltd* CCZ 15/2016, at p. 6. *In casu*, the question of the legality of the JSC's representation by its Secretary was determined on the basis of extant statutory provisions, which provisions must be presumed to be constitutional. See *Mujuru* v *President of Zimbabwe & Ors* CCZ 08-2018. Thus, no constitutional matter could arise in respect of conduct based on the Judicial Service Act and the High Court Rules, unless the provisions in question were themselves impugned for being unconstitutional. Accordingly, in respect of the first issue, there was no constitutional issue involved.
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> The second issue concerns the quorum of the JSC at its meeting of 13 December 2019. Both the High Court and the Supreme Court dismissed the claim that the JSC was inquorate on the basis of the absence of pertinent evidence. The questions as to the proof that was required to show that the JSC did not have the requisite quorum and the party upon whom the onus to prove the same rested are undoubtedly questions of evidence. *In casu*, there was no allegation by the applicant based on any provision of the Constitution to the effect that he was not required to prove that the JSC was inquorate at the relevant time. In the absence of any such averment, no constitutional matter could have arisen regarding the party upon whom the onus rested to prove that the JSC was quorate or inquorate."

[21] Whilst focussed on the constitutionality of issues raised before it, the Constitutional Court, nonetheless (a) upheld the validity of "Annexure A" and (b) the scope of Chikwana`s authority as the JSC`s accounting officer. In addition, (c) the Constitutional Court went further and validated the proceedings in which "Annexure A" had been brought into being as a JSC resolution.

IS THE PRESENT MATTER DISTINGUISHABLE?

[22] Quite clearly, the courts have spoken beyond issue and confirmed the validity of the JSC`s resolution embodied in "Annexure A". They have also pronounced themselves as well the propriety of Chikwana instituting proceedings on the authority of "Annexure A". I am thus obliged to follow the decisions of this court per CHIKOWERO J, as well as the Supreme Court

and Constitutional Court. Unless of course, as argued by Mrs *Mtetwa*, there are sufficiently persuasive grounds in the present dispute that justify a departure.

[23] It was submitted that such grounds indeed existed and I will proceed to consider that argument. Before doing so, it is necessary to restate the full objection raised by respondent in paragraphs (2) and (2.1) of her opposing affidavit. I will annotate same [in parenthesis] to mark the separate points made for ease of reference.; -

> *"[1]* I have perused ANNEXURE "A" and consider that it is insufficient to clothe MR CHIKWANA with the power to bring the current proceedings. *[2]* The Applicant is a body which ought to be made up by thirteen Commissioners representing different interest groups. It is that body, as a collective, which resolves to litigate or to defend legal proceedings against it. *[3]* I challenge MR CHIKWANA to produce a resolution authorising the litigation against me. *[4]* In the absence of a resolution by the Commissioners to bring these proceedings, I deny that MR CHIKWANA can represent the applicant in unauthorised proceedings.
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> *"[5]* I point out that ANNEXURE "A" limits consultation for purposes of preparing pleadings to only two commissioners and contend that such consultation cannot in any way be a substitute for a resolution for the entire commission. *[6]* To read ANNEXURE "A" to mean that only two Commissioners, out of thirteen, should make decisions would be a gross violation of the Constitution where the Constitution maker envisaged all thirteen Commissioners being responsible for decision making. *[7]* This is particularly so given the clear legislative intent that various interest groups be represented. *[8]* I therefore challenge MR CHIKWANA to produce the resolution of Commissioners authorising the bringing of the application against me".

[24] The above excerpts record respondent`s objection on the papers. The heads of argument filed on her behalf did not follow though the objections set in the opposing affidavit. As stated earlier in this judgment, counsel for applicant articulated the objection further in argument. I sought clarity from counsel on several occasions during argument to stipulate or itemise the specific grounds that distinguished this matter from the position taken by the Supreme Court.

With respect, counsel's responses essentially oscillated around points *[1]* to *[8]* in the paragraphs quoted above. No useful purpose would be gained by detailing all of them.

[25] However, I will dwell on three points raised by counsel for respondent in seeking to distinguish this matter from the previous binding decisions. The first such point is the failure by applicant to furnish proof that Chikwana had complied with all the conditions of "Annexure A". In particular, respondent demanded proof that Chikwana had furnished each commissioner of the JSC with all the pleadings filed in the present matter.

[26] I did not find merit in the submission that proof of Chikwana`s circulation of pleadings to JSC commissioners (or failure thereof) would affect the validity of "Annexure A" as approval for instituting proceedings. Whether or not Chikwana adhered to the requirement to circulate court papers to the commissioners of the JSC became a matter of internal compliance rather than validation of his authority to institute and prosecute proceedings.

[27] The second point raised by Mrs *Mtetwa* was that the Chief Justice and Deputy Chief Justice ought to have recused themselves from the JSC`s proceedings of 6 June 2019 which resolved to authorise Chikwana to institute the present proceedings. The reason for such recusal being that the Chief Justice and his deputy had, according to respondent, been involved in "proceedings" leading to her removal from office. I would agree with Mr. *Mugandiwa* that in order to shift the onus to applicant on the issue, respondent ought to have furnished some facts or evidence to support such claim and gainsay the apparent validity of the JSC resolution.

[28] The exact nature of the proceedings concerned was not specified, nor were details regarding the role of the Chief Justice and his deputy in such proceedings specified. A demand for recusal, as a general rule, raises disquiet regarding possible conflict of interest or breach of mandate which in turn infringe the rules of natural justice and in the end, taint judicial or administrative process.

[29] It was therefore necessary that the full basis of respondent`s misgiving be placed before the court as facts. Neither the opposing affidavit not the heads of argument amplified this grounds. On that basis, the argument raised by counsel on recusal cannot, with respect, sustain

in persuading the court to revisit the matter of the validity of the JSC proceedings of 6 June 2019 which the courts and in particular, the Constitutional Court have so definitively concluded.

APPARENT CONFLICT BETWEEN THE SUPREME COURT DECISIONS OF *BERE v JSC & ORS;* AND *DUBE v PSMAS & ANOR*

[30] The third point was raised as an additional point of law by Mrs *Mtetwa* who urged this court not to follow *Francis Bere v JSC* SC 1-22 [*SC 1-22*]. Counsel argued that to the extent that the Supreme Court had departed, in *SC1-22,* from its earlier position in *Cuthbert Elkana Dube v Premier Medical Aid Society & Anor* SC 73-19, ("*Cuthbert Elkana Dube*"), then that latter decision should be considered incorrect. This argument was partially in response to a submission by Mr. *Mugandiwa* (following a bench-bar discourse), that in *SC 1-22*, the Supreme Court had ruled that an accounting officer such as Chikwana could proceed to institute proceedings on behalf of an entity by virtue of statutory authority without need for a resolution.

[31] Mr. *Mugandiwa* further argued that the Supreme Court had in *SC1-22*, made a distinction between statutory or constitutional bodies on one side, and commercial entities incorporated or governed by the Companies and Other Businesses Act *[Chapter 24:31]* (COBA) on the other. He submitted that only in the latter category of non-statutory corporates was proof of authority to represent an entity in legal proceedings required. Mrs Mtetwa insisted that the correct position was reflected in *Cuthbert Elkana Dube* and that *SC 1-22* had been wrongly decided.

[32] There are five responses to this third point and its resultant arguments from both counsel. Firstly, if Mr. *Mugandiwa*` s position is to be assumed as correct, then by necessary implication, there is no reason why others entity representatives such as "*head officers*"[6], or even "*principal officers*"[7],should not enjoy the same privileges extended to "*accounting officers*"[8].All such officers ,whose roles are also provided by their governing statutes, should be able to validly institute proceedings in courts without proof of approval from the bodies running the affairs of their entities. Such an approach would clearly be inconsistent, not only

[6](Effectively chief executive officers or managing directors) as defined by sections 221 (4) and (5) of COBA
[7] As per sections 20 and 20A of the Banking Act *[Chapter 24:20] as an example.*
[8] As defined in section 10 of the Public Finance Management Act

with *Cuthbert Elkana Dube* and all the other authorities cited therein, but ironically- with *SC 1-22* itself.

[33] Secondly and more substantively, I did not read the *Bere v JSC* decisions in the High Court, Supreme Court *[SC1-22]*, and Constitutional Court to have specifically or unequivocally held that the status of statutory accounting officer obviated prior corporate authority to institute proceedings. The relevance of "accounting officer" to the matter at hand in those decisions was secondary to the validity of authority empowering the accounting officer to act on behalf on the entity. In that regard, I do not believe that those decisions should be taken as having departed from the position laid by GARWE JA (as he then was) in *Cuthbert Elkana Dube* where the Learned Judge of Appeal held as follows [at 38]; -

> "A person who represents a legal entity, when challenged, must show that he is duly authorised to represent the entity. His mere claim that by virtue of the position he holds in such an entity he is duly authorised to represent the entity is not sufficient. He must produce a resolution of the board of that entity which confirms that the board is indeed aware of the proceedings and that it has given such a person the authority to act in the stead of the entity. I stress that the need to produce such proof is necessary only in those cases where the authority of the deponent is put in issue. This represents the current state of the law in this country." [underlined for emphasis]

[34] Thirdly, contrary to the argument by Mr. *Mugandiwa,* no distinction was made in *SC 1-22* between private and public entities. If anything, GUVAVA JA relied on, and referred with approval, in *SC 1-22*, to *First Mutual Investment (Pvt) Ltd v Roussaland Enterprises (Pvt) Ltd and Ors* HH 301/17, a decision dealing with COBA entities.

[35] Fourthly, at the base of it all is the fact that the authorities on the matter,(*SC1-22* included), in any event, made specific findings on the validity on "Annexure A", notwithstanding the dictum on accounting officers.Clearly,the situation would have been different had the decisions ruled against the validity of "Annexure A" and found instead ,that Chikwana`s authority to institute proceedings issued independently from his statutory responsibilities .Such a finding was not pronounced and therefore such a finding should not be presumed.

[36] As a last point, I note that in the *Bere v JSC* decisions, the power to institute proceedings related to the primary matter of removal of a judge from office in terms of section 187 (8) of the Constitution. In *Paradza* v *Chirwa & Ors* 2005 (2) ZLR 94, the removal of a judge from office was described as a significant constitutional measure. In that regard, if this court, together with the Supreme Court and Constitutional Court found "Annexure A" valid for such a grave constitutional measure, then surely the same resolution should suffice for purposes of a significantly lesser contest over an asset?

[37] Having considered the arguments submitted on behalf on the parties, I find no substance in the challenge to the validity of the JSC resolution ("Annexure A"), and the subsequent deposition of the founding affidavit by the JSC`s Secretary, Mr. Walter Chikwana, such validity to institute the present proceedings, having been established and confirmed by this court, the Supreme Court and Constitutional Court.

Accordingly, it is ordered; -

> That the preliminary objections raised by the respondent be and are hereby disallowed with costs in the cause.

Wintertons-legal practitioners for applicant
Mtetwa and Nyambirai-legal practitioners for respondent

CHILIMBE J___09/11/22