

REPORTABLE (9)

Judgment No. SC 15/03

Civil Appeal No. 275/02

**(1) Lawrence Dambudzo Mudehwe No**

**(2) City Of Mutare V**

**(1) Crispen Dembaremba (2) Reverend Doctor Fred Gomendo (3)**

**Virginia Cm Pinto (4) Kenneth Jk Saruchera**

SUPREME COURT OF ZIMBABWE

CHIDYAUSIKU CJ, CHEDA JA & ZIYAMBI JA

HARARE, MAY 5 & JUNE 11, 2003

*J C Andersen*, for the appellants

*T Biti*, for the respondents

CHEDA JA: The first appellant is the duly elected executive mayor for the City of Mutare. The second appellant is the City of Mutare, established in terms of the Urban Councils Act [*Chapter 29:15*] ("the Act"). The respondents are all councillors of the second appellant who were elected in 1999.

Following their election as councillors, the respondents were appointed to various committees as follows –

1. The first respondent was appointed chairperson of the Public Works and Town Council Committee;
2. The second respondent was appointed/was elected chairperson of the Environmental Management Committee;
3. The third respondent was elected chairperson of the Finance Committee; and
4. The fourth respondent was elected chairperson of the Housing, Education and Community Services Committee.

On 25 August 2001 the first respondent circulated a notice of a meeting to be held on 30 August 2001. Part of the agenda of that meeting was to consider the election of the deputy mayor and review appointments of standing committees.

The respondents later learnt that the meeting would also elect new councillors to sit on standing committees. On 29 August 2001 the respondents filed an urgent court application to stop the election of councillors to the various committees.

It was later agreed that the application be set down as an opposed application. On 24 July 2002 a judgment was handed down by the High Court in which an order was made setting aside the appointments to the standing committees which had been made by the appellants whilst the matter was pending.

This appeal is against that judgment.

The main issue raised in this appeal concerns the interpretation of ss 92 and 96 of the Act.

The respondents, having been elected chairpersons of standing committees, became members of the executive committee of the Council. The main question is whether they can be replaced as chairpersons of standing committees during their tenure of office as councillors.

Section 96(8) of the Act provides as follows:

“(8) At every meeting referred to in subsection (1) of section one hundred and three a council shall which has appointed standing

committees review the work of each standing committee during the previous year and shall re-appoint such standing committees or appoint different standing committees in terms of subsection (1)."

The respondents' view, as gathered from the first respondent's founding affidavit, is that:

"... once a person has been appointed as a member of a standing committee, his membership only ceases after a general election or when that particular member ceases to be a councillor".

This view is wrong. It seems this results from a misunderstanding of s 92(3), which reads:

"(3) A member of an executive committee shall hold office as such until the end of his current term of office as mayor or councillor or when he ceases to be chairman of a standing committee." (The emphasis is mine)

The underlined part of the section shows that even while he is still a councillor if he ceases to be a chairperson of a standing committee, for whatever reason, he ceases to be a member of the executive committee but remains an ordinary councillor.

Section 96(8) of the Act provides for review of the work of a standing committee in the previous year. When this is done, the Council can either re-appoint the same members to the standing committee or elect new and different members. Again this means that those who were on the committee cease to be members of the standing committee concerned and revert to positions of ordinary councillors.

It is not correct to say that members of standing committees must be replaced at each such meeting. The same people can be re-appointed.

It is also incorrect to suggest that membership of a standing committee only ceases after the general election held for the Council.

There are therefore three ways in which a councillor ceases to be a member of a standing committee. These are –

- (a) if he has served his full term and elections of councillors are held (ss 92(3) and 96(7)(a)); or
- (b) if for some other reason he ceases to be a councillor (s 96(7)(b)); or
- (c) if, after reviewing the work of the standing committee, the Council decides to elect different persons to that standing committee (s 96(8)).

It seems that the different views expressed by the appellants' legal practitioners and the Secretary for Local Government and National Housing contributed to the confusion as to the correct position.

The Secretary for Local Government and National Housing was wrong in advising that once appointed the chairpersons of standing committees had tenure of office until the next general election, as there is provision for a different committee to be appointed after a review of the work of the current committee in the previous year.

The other issue raised was that the work of standing committees was not reviewed, as provided by s 96(8) of the Act. The court *a quo* decided that some exercise or motion aimed at justifying retention or re-appointment of the standing committees ought to have been gone through before new members were elected to such committees. It concluded that the appointments to the

second appellant's standing committees in August 2001 were premature and irregular and set aside the appointments.

The Council Minutes of 30 August 2001 reflect a lengthy discussion on the question whether the Council could proceed to review the work of the standing committees and conduct elections of members to those committees. The Minutes also show that views were expressed showing concern about how the appointment of the town clerk had been handled by the executive committee, and the fact that the councillors expressed displeasure at the work and composition of the standing committees. According to the Minutes, there was consensus and the Council conducted elections of members of various committees.

In his opposing affidavit, Dr Morgan Chawara, the town clerk, says that the Council duly proceeded to review the work of the standing committees and elections were held and new members elected. This has not been shown to be untrue.

The answering affidavit of Ms Pinto, in which she says:

"I, however, confirm that the second respondent (now the second appellant) did not review the work of committees but simply proceeded in appointing newly constituted committees",

cannot be taken seriously because the Minutes show that she left the meeting and elections were eventually conducted in her absence.

On the other hand, discussions on how the appointment of the town clerk had been handled and the displeasure expressed by councillors occurred in her presence.

It should be noted that the Minutes are a summary of the discussions held and not a verbatim reflection of everything that was discussed.

Further to that, this Court is not reviewing how the "review" was carried out but simply whether there was a review or not.

The fact that councillors expressed displeasure at the performance of the committees and decided to appoint new committees points to a review of their work having been done.

In conclusion, the Council made substantial compliance with the requirements of the Act, in that no matter how the review was carried out, at least it was carried out.

Following that review and the displeasure expressed by councillors, new committees were appointed in accordance with the Act.

Accordingly the appeal should succeed. The order of this Court is that the decision of the court *a quo* is set aside and the following order is substituted:

"1. The application is dismissed with costs."

CHIDYAUSIKU CJ: I agree.

ZIYAMBI JA: I agree.

*Mandizha & Co*, appellants' legal practitioners

*Honey & Blanckenberg*, respondents' legal practitioners