

Statutory Instrument 54 of 2023.

[CONSTITUTION

Proclamation 3 of 2023

PROCLAMATION

by

HIS EXCELLENCY, THE HONOURABLE EMMERSON DAMBUDZO MNANGAGWA, G.C.Z.M., President of Zimbabwe and Commander-in-Chief of the Defence Forces of Zimbabwe.

WHEREAS section 187(1) of the Constitution of Zimbabwe provides that, a judge may be removed from office only for inability to perform the functions of his or her office, due to mental or physical incapacity; gross incompetence; or gross misconduct;

AND WHEREAS section 187(3) of the Constitution of Zimbabwe provides that, if the Judicial Service Commission advises the President that the question of removing a judge, from office ought to be investigated, the President must appoint a tribunal to inquire into the matter;

AND WHEREAS the Judicial Service Commission, by letter dated 9th March, 2023, advised the President that the question of removal from office of the Honourable Mr. Justice Martin Makonese, ought to be investigated;

AND WHEREAS section 187(4) of the Constitution of Zimbabwe, provides that, a tribunal appointed under this section must consist of at least three members appointed by the President, of whom—

- (a) at least one must be a person who has served as a judge of the Supreme Court or High Court in Zimbabwe or holds or has held office as a judge of a court with unlimited jurisdiction in civil or criminal matters in a country whose common law is Roman-Dutch or English, and English is an officially recognised language; and
- (b) at least one must be chosen from a list of three or more legal practitioners of seven years' standing or more who have been nominated by the association, constituted under an Act of Parliament, which represents legal practitioners in Zimbabwe;

AND WHEREAS section 187(9) of the Constitution of Zimbabwe, provides that, a tribunal appointed under section 187 has the same rights and powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*], or any law that replaces that Act;

AND WHEREAS the President may authorise the tribunal or Members or any quorum of them specified in the proclamation into any matter in which any inquiry would, in the opinion of the President, be of public welfare:

NOW, THEREFORE, under and by virtue of the powers vested in the President as afore said, I do, by this proclamation:

- (a) establish a Tribunal to inquire into the question of removal from office of the Honourable Justice Martin Makonese;
- (b) appoint Retired Justice Professor Simbi Veke Mubako; as Chairperson of the Tribunal;
- (c) appoint the Secretary for Justice, Legal and Parliamentary Affairs to be the Secretary to the Tribunal;
- (d) direct that the Tribunal shall be held within a period of five (5) months from the date of swearing in of Members, at such appropriate venue as shall be determined by the Tribunal;
- (e) direct that the report shall be availed at the conclusion of the inquiry;
- (f) direct that the Terms of Reference shall be as follows:—
 - (i) to inquire into the matter of the removal from office of Honourable Justice Martin Makonese;
 - (ii) to investigate Honourable Justice Makonese's conduct as alleged in the dossier from the Judicial Service Commission, whether it can be deemed to have been tantamount to gross misconduct and gross incompetence;
 - (iii) to investigate whether the Honourable Justice Makonese interfered with the course of justice during the course of his duties;
 - (iv) to investigate whether Honourable Justice Makonese presided over matters wherein he had a direct conflict of interest;

- (v) to consider all information submitted by the Judicial Service Commission in order to arrive at an appropriate recommendation to the President;
- (vi) to investigate any other matter which the Tribunal may deem appropriate and relevant to the inquiry;
- (vii) to recommend on whether the Honourable Judge, is fit to hold office in light of the foregoing;
- (viii) to report to the President, in writing, the result of the inquiry within a period of five (5) months from the date of swearing in of the Members;
- (g) direct that the inquiry shall be held both in public, or privately, as the exigencies of the Tribunal may determine; and
- (h) appoint the Members listed in the Schedule.

SCHEDULE

APPOINTMENT OF MEMBERS TO THE TRIBUNAL

1. Retired Justice Professor Simbi Veke Mubako, Chairperson.
2. Dr. Gift Manyatera, Member.
3. Ms Sarah Moyo, Member.

Given under the hand and the Public Seal of Zimbabwe at Harare this twentieth day of April, in the year of our Lord two thousand and twenty-three.

E. D. MNANGAGWA,
President,

By Command of the President.

