

18, 1968
(18)

IN THE PRIVY COUNCIL

13 OF 1968

ON APPEAL
FROM THE APPELLATE DIVISION OF THE HIGH COURT OF SOUTHERN
RHODESIA

B E T W E E N :

STELLA MADZIMBAMUTO

Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superin-
tendent of the Gwelo Prison

Second
Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF JURISPRUDENCE
LONDON
16 JAN 1969
25 RED LION SQUARE
LONDON, W.C.1.

BERNARD SHERIDAN & CO.,
14 Red Lion Square,
London,
W.C.1.

Solicitors for the Appellant.

O N A P P E A L

FROM THE APPELLATE DIVISION OF THE HIGH COURT OF SOUTHERN
RHODESIA

B E T W E E N :

STELLA MADZIMBAMUTO

Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
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of the Gwelo Prison

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Respondent

RECORD OF PROCEEDINGS

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1.	"Economic Sanctions and Rhodesia" written by Timothy Curtin and David Murray and published by the Institute of Economic Affairs, being Appendix A to the Affidavit of David Watson Young sworn on the 30th day of October 1967.
2.	Various press cuttings comprising Appendix B to the Affidavit of David Watson Young sworn on the 30th day of October 1967.

ON APPEAL
FROM THE APPELLATE DIVISION OF THE HIGH COURT
OF SOUTHERN RHODESIA

B E T W E E N:

STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend- Second
ent of the Gwelo Prison Respondent

RECORD OF PROCEEDINGS

NO. 1

In the
General
Division

IN THE GENERAL DIVISION OF THE HIGH COURT OF
RHODESIA

No.1

Index

20

IN THE MATTER between:

STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister
of Justice and of Law and First
Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superin- Second
tendent of the Gwelo Prison Respondent

30

2.

In the General
Division

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No.2
Notice of
Motion
Dated 24th
February,
1966

NO. 2
NOTICE OF MOTION

IN THE GENERAL DIVISION Case No.GD247/66 10
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister
of Justice and of Law and First
Order Respondent

- and -

FREDERICK PHILLIP GEORGE 20
in his capacity as
Superintendent of the Second
Gwelo Prison Respondent

NOTICE OF MOTION

TAKE NOTICE that STELLA MADZIMBAMUTO
(hereinafter referred to as "the
Applicant") intends to make application to
the General Division of the High Court at
Salisbury at 10 a.m. on the 10th day of
March, 1966.

30

3.

1. for an order that the respondents produce DANIEL NYAMAYARO MADZIMBAMUTO before the Court upon a date to be fixed by the Court in order that the Court may discharge the said DANIEL NYAMAYARO MADZIMBAMUTO from custody and detention and set him at liberty;
- 10 2. for an order that the respondents pay the costs of these proceedings;

In the General
Division

—
No.2

Notice of
Motion
Dated 24th
February,
1966
(Contd.)

and that the accompanying affidavits will be used in support thereof.

FURTHER take notice that if you intend to oppose this application you are required to notify the Applicant's Attorney in writing on or before the 2nd day of March, 1966, and to file your affidavits with the Registrar of the Court at Salisbury on or before the 4th day of March, 1966.

20 SHOULD you fail to give due notice of your intention to oppose, or should you fail duly to file your affidavit, you may render yourself liable for any extra costs incurred by the Applicant by reason of such failure.

DATED at SALISBURY this 24th day of February, 1966.

(Signed) Anthony Jaffey
SCANLEN & HOLDERNESS,
Applicant's Attorneys,
Barclays Bank Building,
30 Manica Road, Salisbury.

(which is the Applicant's address for service).

To: The Registrar of the General Division of the High Court, Salisbury.

And To: DESMOND WILLIAM LARDNER-BURKE,
(in his capacity as Minister of Justice and of Law and Order),
40 First Respondent,
Vintcent Building, Jameson Avenue,
Salisbury.

4.

In the General
Division

No.2

Notice of
Motion
Dated 24th
February,
1966
(Contd.)

And to: FREDERICK PHILLIP GEORGE,
(in his capacity as Superintendent
of the Gwelo Prison),
Second Respondent,
Gwelo Prison,
Gwelo.

No.3

Applicant's
Affidavit
Dated 22nd
February
1966

NO.3

APPLICANT'S AFFIDAVIT

IN THE GENERAL DIVISION Case No.GD247/66
OF THE HIGH COURT OF RHODESIA

10

IN THE MATTER between:

STELLA HADZIMGAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison Second 20
Respondent

APPLICANT'S AFFIDAVIT

I, STELLA MADZIMBAMUTO, do hereby
make oath and say that:-

1. I am the applicant in the above matter
and I reside at N.22 Old Highfields,
Salisbury.
2. I am married by Christian rites to
DANIEL NYAMAYARO MADZIMBAMUTO
(hereinafter referred to as "my
husband").

30

5.

3. The first respondent is DESMOND WILLIAM IARDNER-BURKE, in his capacity as Minister of Justice and of Law and Order, of Vintcent Building, Jameson Avenue, Salisbury.

In the General
Division

No.3

4. The second respondent is FREDERICK PHILIP GEORGE, in his capacity as Superintendent of the Gwelo Prison, of the Gwelo Prison, Gwelo.

Applicant's
Affidavit
Dated 22nd
February
1966
(Contd.)

10 5. On or about the 20th June, 1965, my husband was served with a restriction order in terms of Section 50 of the Law and Order Maintenance Act, signed by the first respondent, to the effect that my husband was restricted to an area, which is commonly known as Gonakudzingwa, for a period of 5 years.

20 6. On the 23rd December, 1965, as a consequence of information received, I proceeded to the Gwelo Prison where I saw my husband, who was then detained in the said prison.

30 7. Before being permitted to see my husband I was informed by a prison officer that I had to obtain permission from the "Protecting Authority" for the district of Gwelo, a Mr. Bailey of the British South Africa Police, which permission I had obtained prior to my visit of the 23rd December in the form of a written permit which I surrendered to a prison officer upon entry.

40 8. I interviewed my husband in a room within the prison block. He was escorted to and from such room by prison officers, and prison officers and a member of the Criminal Investigation Department remained in attendance throughout the interview. I was permitted to speak to my husband for only some twenty minutes.

9. It was apparent to me that my husband was in detention and was no longer in

In the General
Division

No. 3

Applicant's
Affidavit
Dated 22nd
February
1966
(Contd.)

restriction in terms of the Law and Order (Maintenance) Act, and that he was being detained against his will.

- 10. My husband has never been convicted of any offence.
- 11. My husband was still in detention on the 16th February, 1966, as will appear from the affidavit of ANTONIA CATHERINE CACCIA.
- 12. I verily believe that it is upon the orders of the first respondent that my husband is being so detained, and I verily believe that the first respondent purports to be acting under powers conferred upon him by Section 21 of the Emergency Powers (Maintenance of Law and Order) Regulations, 1966, published in Rhodesia Government Notice No. 71 of 1966. 10
- 13. The said Regulations are of no force and effect by reason of the fact that no proclamation of emergency under the Emergency Powers Act (Chapter 33) is presently in force. 20
- 14. The second respondent is the Superintendent of the Gwelo Prison and it is in his custody that my husband is lodged.
- 15. In the premises my husband is being unlawfully deprived of his liberty by the respondents. 30

SWORN at SALISBURY this 22nd day of February, 1966.

(Signed) S. Madzimbamuto

Before me,

(Signed) L. W. Lewis

COMMISSIONER OF OATHS

7.

NO.4

In the General
Division

AFFIDAVIT OF ANTONIA CATHERINE
CACCIA

No.4

Case No.GD 247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Affidavit of
Antonia
Catherine
Caccia
Dated 22nd
February
1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10

DESMOND WILLIAM
LARDNER-BURKE
in his capacity as
Minister of Justice First
and of Law and Order Respondent

- and -

20

FREDERICK PHILLIP
GEORGE
in his capacity as
Superintendent of Second
the Gwelo Prison Respondent

AFFIDAVIT OF ANTONIA CATHERINE CACCIA

I, ANTONIA CATHERINE CACCIA, do hereby
make oath and say:

1. I am an employee of the Prison Education
Committee employed at 306 Shepperton
House, Cameron Street, Salisbury.
2. On the 16th February, 1966, in pursuance
of my duties as adviser to prisoners
following educational courses, I
30 visited Gwelo Prison, and interviewed
DANIEL NYAMAYARO MADZIMBAMUTO.
3. The interview took place in the foyer
of the prison, within the prison walls

In the General
Division

No.4

Affidavit of
Antonia
Catherine
Caccia
Dated 22nd
February
1966
(Contd.)

and the said DANIEL NYAMAYARO MADZIMBAMUTO was escorted to and from the interview by prison officers.

- 4. An official, whom I believe to be the second respondent, was present during the interview and at one stage interrupted a conversation between myself and the said DANIEL NYAMAYARO MADZIMBAMUTO, stating that we were not permitted to discuss the subject of a legal suit which the said DANIEL NYAMAYARO MADZIMBAMUTO stated to me that he wished to institute.
- 5. I verily believe that the said DANIEL NYAMAYARO MADZIMBAMUTO was in detention within the prison and was being detained against his will.

10

SWORN at SALISBURY this 22nd day of February, 1966.

(Signed) Antonia Caccia

Before me,

20

(Signed) L. W. Lewis

COMMISSIONER OF OATHS.

9.

NO. 5

DRAFT ORDER

Case No. GD.247/66

In the General
Division

No.5

Draft Order

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

DRAFT ORDER

IT IS ORDERED

20

1. That the Respondents produce DANIEL NYAMAYARO MADZIMBAMUTO before this Honourable Court on the day of . 1966 in order that this Honourable Court may discharge the said DANIEL NYAMAYARO MADZIMBAMUTO from custody and detention and set him at liberty.
 2. That the Respondents pay the costs of these proceedings.
-

10.

In the General
Division

NO. 6

No.6

INDEX OF RESPONDENTS'
AFFIDAVITS

Index of
Respondents'
Affidavits

Case No.GD.247/66

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

RESPONDENTS' AFFIDAVITS

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In the General
Division.

NO. 7

No.7

AFFIDAVIT OF DESMOND WILLIAM
LARDNER-BURKE

Affidavit of
Desmond William
Lardner-Burke
Dated 23rd
April 1966

Case No.GD.247/66

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwalo Prison

Second
Respondent

AFFIDAVIT

I, DESMOND WILLIAM LARDNER-BURKE, make
oath and state as follows:-

1. I am the first respondent in this case.

20

2. I hold office as a Minister of the
Government of Rhodesia constituted
under the Constitution of Rhodesia,
1965, and as a member of the Parliament
constituted under that Constitution.
The Constitution of Rhodesia, 1965,
is, as will appear from this affidavit
and from the other affidavits filed
on behalf of the respondents in this
case to which I respectfully refer
this Honourable Court, the only
effective Constitution of Rhodesia
and similarly the Government of
Rhodesia and the Parliament of
Rhodesia functioning under it are

30

13.

the only effective Government and
Legislature.

In the General
Division

No.7

Affidavit of
Desmond William
Lardner-Burke
Dated 23rd
April 1966
(Contd.)

3. I have no knowledge of paragraphs 1
and 2 of the applicant's affidavit
but do not dispute them.

I admit paragraphs 5, 10 and 14 of
the applicant's affidavit.

- 10 4. As regards paragraphs 6, 7, 8, 9
and 11 of applicant's affidavit, I
admit that applicant's husband was
detained at Gwelo in the custody of
the second respondent until removed
therefrom to the Gonakudzingwa
Restriction Area in accordance with the
earlier judgment of this Honourable
Court in this case dated the 14th March
1966.

- 20 5. As regards paragraph 12 of the applicant's
affidavit, I say that the applicant's
husband is being and has been so
detained by virtue of an order made
by me on the 6th November, 1965, in
terms of subsection (1) of section 21
of the Emergency (Maintenance of
Law and Order) Regulations, 1965,
published in Rhodesia Government
30 Notice No. 736 of 1965, dated the 5th
November, 1965, and subsequently
continued in force by virtue of section
47 of the Emergency Powers (Maintenance
of Law and Order) Regulations, 1966,
published in Rhodesia Government Notice
No. 71 of 1966. A copy of the said
order is annexed hereto marked 'A'.

- 40 6. As regards paragraph 13 of applicant's
affidavit, I respectfully contend that
the last mentioned regulations are lawful
and of full force and effect by virtue
of the fact that a valid proclamation
of emergency under the Emergency Powers
Act Chapter 33 is presently in force (see
Rhodesia Proclamation No. 3 of 1966,
published in Rhodesia Government Notice
No. 57 of 1966). I further respectfully

In the General
Division

No.7

Affidavit of
Desmond William
Lardner-Burke
Dated 23rd
April 1966
(Contd.)

contend that this proclamation is valid by virtue of the Emergency Powers Act Chapter 33 as read with the Constitution of Rhodesia, 1965.

7. In these premises I deny that the applicant's husband is being unlawfully deprived of his liberty by me.
8. Alternatively to the above, I further respectfully contend that the proclamation of the state of emergency and the aforesaid Emergency Powers (Maintenance of Law and Order) Regulations, 1966, are valid and of full force and effect by virtue of the fact that they are measures taken by the only effective Legislature and Government of Rhodesia as being necessary for the preservation of peace and the maintenance of order in Rhodesia and for the good government thereof. 10
9. Furthermore, I say that the original detention of applicant's husband pursuant to the order made by me on the 6th November, 1965 (which order was served on the applicant's husband on the 8th November, 1965) and his continued detention thereafter appeared and still appear to me to be necessary and expedient in the public interest, including the preservation of peace and the maintenance of order in Rhodesia and for the good government thereof. The applicant's husband is a man who has been regarded by successive Governments in this country since 1959 as a serious threat to the peace, order and good government of Rhodesia. Thus:- 20
- (a) On or about the 26th February 1959, he was detained until the 14th May, 1959, in terms of the Emergency (Temporary Detention) Regulations, 1959; from 15th May, 1959, he was 30 40

detained under the Preventive Detention (Temporary Provisions) Act, 1959, (later Chapter 74). His case was reviewed by the tribunal set up under the said Act and the tribunal presided over by his Lordship the present Chief Justice recommended that his detention be continued, which recommendation was accepted by the Governor. He was thereafter on the 8th June, 1961, released to a restriction area at Hafurgabuni and finally released on the 15th January, 1963.

In the General
Division

—
No.7

Affidavit of
Desmond William
Lardner-Burke
Dated 23rd
April 1966
(Contd.)

10

(b) On the 28th April, 1964, he was served with an order issued by the then Minister of Law and Order in terms of the Law and Order (Maintenance) Act, 1960, (now Chapter 39) restricting him to the area known as Gonakudzingwa. On the 13th August, 1964, following the decision of the Appellate Division of this Honourable Court confirming an order of the General Division setting aside the aforesaid restriction order, he was served with a similar order restricting him to the Sangwe Tribal Trust Area. This order expired on the 13th April, 1965, and he was released from restriction.

20

30

(c) On the 19th June, 1965, applicant's husband was served with an order issued by me in terms of the Law and Order (Maintenance) Act Chapter 39 restricting him to the Wha Wha Restriction Area for a period of five years. This order was subsequently varied by me, at first to restrict him to the Sengwe Restriction Area (also known as Gonakudzingwa) and then to permit him to leave

40

16.

In the General
Division

No.7

Affidavit of
Desmond William
Lardner-Burke
Dated 23rd
April 1966
(Contd.)

the Restriction Area for the
purpose of undergoing detention
in terms of the order issued
by me referred to in paragraph
5 hereof.

10. In these premises also I deny that the
applicant's husband is being unlawfully
deprived of his liberty by me.

SWORN TO at SALISBURY this 23rd day of
April, 1966.

10

(Signed) D. Lardner-Burke...

Before me,

(Signed) E. Pope-Simmonds...

Commissioner of Oaths.

ORDER IN TERMS OF SECTION 21 OF THE EMERGENCY
(MAINTENANCE OF LAW AND ORDER) REGULATIONS,
1965.

No. 7a
Order dated
6th November
1965:
Annexure "A"
to Affidavit
of Desmond
William Lardner-
Burke dated
23rd April 1966.

To: DANIEL MADZIMBAMUTO R.C. X15158 Mrewa

You are hereby notified that I consider
that it is expedient in the public interest
to make an Order against you in terms of
subsection (1) of section 21 of the
Emergency (Maintenance of Law and Order)
Regulations, 1965.

20

2. This Order is based on -

A belief that you are likely to commit
acts in Rhodesia which are likely to
endanger the public safety, disturb or
interfere with public order, or interfere
with the maintenance of any essential
service.

3. NOW, THEREFORE, in terms of subsection (1) of section 21 of the Emergency (Maintenance of Law and Order) Regulations, 1965 I do hereby order that you shall be detained in Gwelo Prison until the termination of the state of emergency in Rhodesia or until this order is revoked or varied.

In the General Division

No.7(a)

Order dated 6th November 1965: Annexure "A" to Affidavit of Desmond William Lardner-Burke dated 23rd April 1966

10

4. This Order shall under the provisions of subsection (1) of section 45 of the aforesaid Regulations, have effect immediately it is made or given to you but you have the right to object to this Order and to make representations in writing to me within seven days after the Order has been delivered or tendered to you stating the reason or reasons why you consider the Order should be revoked.

20

Given under my hand at Salisbury this 6th day of November 1965.

(Signed) D. Lardner-Burke
MINISTER OF LAW AND ORDER

I hereby certify that I have this day of 1965, at hours *delivered/ tendered the original of this Order on or to the within mentioned person by "tendering/ Handing it to him personally at in the district of and have fully explained to him the exigencies thereof.

Place.....Signature.....

30

Date.....Witness

*Delete whichever is inapplicable.



In the General
Division

Case No. GD.247/66

No.8

Affidavit of
Frederick
Phillip George
Dated 8th
March 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

10

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of the Gwelo Prison Respondent

AFFIDAVIT

I, FREDERICK PHILLIP GEORGE, make oath
and say:

1. I am the Second Respondent in this case,
and I admit paragraph 14 of the
Applicant's affidavit.

2. I have no knowledge of paragraphs 1,
2, 5, 8 and 10 of the Applicant's
affidavit, but do not dispute them. 20

3. As regards paragraphs 6, 7, 9 and 11
of the Applicant's affidavit, I admit
that the Applicant's husband is being
detained in my custody at Gwelo Prison
and that he has been so detained since
the 6th November, 1965.

4. As regards paragraph 12 of the
Applicant's affidavit I admit that 30
the Applicant's husband is being and has
been so detained by virtue of an order
made by the First Respondent in terms
of the Emergency (Maintenance of Law
and Order) Regulations, 1965, and

continued in force by the Emergency Powers (Maintenance of Law and Order) Regulations, 1966.

In the General Division

No.8

Affidavit of
Frederick
Phillip George
Dated 8th
March 1966
(Contd.)

5. As regards paragraph 13 of the Applicant's affidavit, I say that the said Emergency Powers (Maintenance of Law and Order) Regulations, 1966, are valid and of full force and effect and that a valid proclamation of emergency under the Emergency Powers Act Chapter 337 is presently in force.
- 10
6. In these premises I deny that the Applicant's husband is being unlawfully deprived of his liberty by me.
7. With regard to paragraph 4 of the affidavit of Antonia Catherine Caccia I have no knowledge of any such incident as is therein deposed to, but if it did occur I deny that it was myself who was concerned.
- 20

SWORN TO at Gwelo this 8th day of March, 1966.

(Signed) F..P..George.....

BEFORE ME,

(Signature indecipherable)

Commissioner of Oaths.

In the General
Division

Case No.GD.247/66

No.9

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Affidavit of
Clifford Walter
Dupont
Dated 25th
April 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

10

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, CLIFFORD WALTER DUPONT, make oath
and say :

1. I am the Officer Administering the
Government of Rhodesia and hold my
office and exercise my functions, duties
and powers under the Constitution of
Rhodesia, 1965.

20

2. On the 11th November, 1965, the
government of the day declared Rhodesia
to be a sovereign independent state
and adopted, enacted and gave to
Rhodesia the Constitution of Rhodesia,
1965, which was published in the
Government Gazette Extraordinary of
that same day.

3. Since then the present Government
has governed in accordance with this
Constitution which it regards and has
at all times since its enactment,
regarded, as the only and effective

30

Constitution of Rhodesia.

In the General
Division

No.9

Affidavit of
Clifford Walter
Dupont
Dated 25th
April 1966
(Contd.)

4. Moreover, I state that since then the people of Rhodesia, African and European, Coloured and Asian, have overwhelmingly conformed to, and accepted, the Government constituted under the 1965 Constitution. More particularly, the Government has received and still enjoys the support of the armed forces of Rhodesia, the British South Africa Police, the Council of Chiefs, and the Public Service, and has also been accepted by, and the Constitution of 1965 ratified by, the Parliament of Rhodesia.
5. I state further that the present Government is and has been at all times since the 11th November, 1965, in complete and effective control within the territory of Rhodesia and it exercises authority over all the people therein. There has been no effective opposition to the introduction or acceptance of the new Constitution of 1965 nor to the continued existence of the present Government nor to the exercise of authority thereby in spite of the fact that, though there is a state of emergency in existence, there is no bar to lawful political activity or opposition.
6. There is no other effective government of Rhodesia in existence. The 1965 Constitution and the present Government of the country do not recognise the British Parliament nor the British nor any other foreign government as having any authority whatever in Rhodesia. The British Government has purported to make laws operative in this country since the assumption of independence, but even where the content of these are known in Rhodesia they are not observed here.
7. Since its assumption of sovereign

In the General
Division

No. 9

Affidavit of
Clifford Walter
Dupont
Dated 25th
April 1966
(Contd.)

independence, Rhodesia has successfully functioned as a sovereign independent state and has been fully capable of carrying on its own international affairs.

8. Accordingly I state that the Constitution of Rhodesia, 1965, is the only effective Constitution of Rhodesia, the Government of which I am the head is the only effective Government of Rhodesia and the Parliament constituted and functioning under the said Constitution is the only effective Legislature. 10
9. The United Kingdom Government which has repeatedly disavowed any intention to use force against Rhodesia, has instead taken certain economic measures against this country, with the stated aim of bringing about the collapse of my Government and putting an end to the independence declared by the Government on the 11th November, 1965. From information available to me in my capacity as the Officer Administering the Government, I have formed the opinion that there is but little likelihood of either of these results being brought about by the actions of the United Kingdom Government nor by any government sharing its views nor by any opposition or counter-revolutionary movement within Rhodesia itself. 20 30
10. On the 3rd February, 1966, in accordance with the provisions of subsection (2) of section 3 of the Emergency Powers Act [Chapter 33], the said Parliament by resolution determined that another proclamation of emergency be issued at or before the end of the period during which Rhodesia Proclamation No. 51 of 1965, published in Rhodesia Government Notice No. 735, was in force. 40

- 11. Accordingly on the 4th February, 1966, by Rhodesia Proclamation No. 3 of 1966, published in Rhodesia Government Notice No. 57 of 1966, because it appeared to me that action has been taken and was immediately threatened by certain persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to disturb or interfere with public order or to interfere with the maintenance of certain essential services in Rhodesia, I declared that a state of emergency existed in Rhodesia.

- 12. Pursuant to the proclamation of the state of emergency, the Emergency Powers (Maintenance of Law and Order) Regulations, 1966, published in Rhodesia Government Notice No. 71 of 1966, were made by me.

- 13. Both the proclamation of a state of emergency referred to in paragraph 11 hereof and the making of the regulations referred to in paragraph 12 hereof were measures necessary for the preservation of peace and the maintenance of order in Rhodesia and for the good government thereof.

30 SWORN TO at SALISBURY this 25th day of April, 1966.

(Signed) Clifford W. Dupont

Before me,

(Signed) J. A. Marshall
.....

Commissioner of Oaths.

In the General Division

No.9

Affidavit of Clifford Walter Dupont
Dated 25th April 1966
(Contd.)

NO. 10

AFFIDAVIT OF THOMAS ARNOLDUS
THERON BOSMAN

In the General
Division

No.10

Affidavit of
Thomas Arnoldus
Theron Bosman
Dated 21st
April 1966

IN THE GENERAL DIVISION OF Case No.GD.247/66
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

10

AFFIDAVIT

I, THOMAS ARNOLDUS THERON BOSMAN, do
hereby make oath and say:

1. I am the Attorney General of Rhodesia.
2. In terms of section 12 of the Criminal
Procedure and Evidence Act Chapter 317
as read with Government Notice No. 56
of 1945, I am the person vested with
and exercising all powers, functions
and authorities relating to the
prosecution of offences in Rhodesia
3. The aforesaid powers, functions and
authorities are by law vested in and
exercisable by me alone.
4. Since the assumption of independence on
the 11th November, 1965, I have at all
times regarded the Constitution of
Rhodesia, 1965, as being the only
and effective Constitution of
Rhodesia and the present Government

20

30

as being the only and effective Government of Rhodesia and the Parliament of Rhodesia as presently constituted as being the only and effective Legislature for Rhodesia.

In the General Division

No.10

Affidavit of
Thomas Arnoldus
Theron Bosman
Dated 21st
April 1966
(Contd.)

10

5. I do not regard, and have not at any time regarded, the Southern Rhodesia Act, 1965, of the United Kingdom or any subordinate legislation made thereunder as having the force of law in Rhodesia. Apart from all else neither the said Act nor the said subordinate legislation nor any other legislation purported to be made by the United Kingdom in respect of Rhodesia since the 11th November, 1965, has been promulgated in Rhodesia.

6. I exercise the aforesaid powers, functions and authorities accordingly.

20

SWORN TO at SALISBURY this 21st day of April, 1966.

(Signed) T. A. T. Bosman.....

BEFORE ME,

(Signed) B. J. Treacy.....

COMMISSIONER OF OATHS.



In the General
Division

NO. 11

AFFIDAVIT OF FRANK ERIC
BARFOOT

No.11

Affidavit of
Frank Eric
Barfoot
Dated 21st
April 1966

Case No.GD.247/66

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, FRANK ERIC BARFOOT, do hereby make
oak and say: 20

1. I am the Commissioner of the British South Africa Police.
2. In the discharge of my duties as such I accept the Constitution of Rhodesia 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country.
3. Instructions given to my subordinates 30

are given on this basis and are carried out without objection to the authority of the present Government.

In the General
Division

No.11

Affidavit of
Frank Eric
Barfoot
Dated 21st
April 1966
(Contd.)

- 10 4. Not only are the personnel of the Police paid by the present Government but both I and the personnel of the Police continue to obey not only the administrative, but also the policy directives, of the present Government of Rhodesia.
- 20 5. In the exercise of my functions as Commissioner of Police, I would observe and obey any laws relevant thereto which were passed by the present Rhodesian Parliament and assented to by the Officer Administering the Government, and from information gathered by me in the course of my duties I am satisfied that the personnel of the Police would do the same in relation to laws relevant to their functions.
- 30 6. Since the assumption of independence on the 11th November, 1965 I have received no instructions from the British Government as to the discharge of my duties, and if I did receive such instructions I would not obey them and I am satisfied from information gathered by me in the course of my duties that I am supported in this attitude by the personnel of the Police.
- 40 7. As the commanding officer of the Police, I can and do state that the present Government has since the 11th November 1965, effectively discharged its responsibility for the maintenance of law and order and has been in complete and effective control of the whole territory and all the inhabitants of Rhodesia. There has been and is no effective opposition to the existence and authority of the present Government which is known to the Security Branch or any other branch of the Police.

In the General
Division

No.11

Affidavit of
Frank Eric
Barfoot
Dated 21st
April 1966
(Contd.)

8. While there is and has been even before the adoption of the 1965 Constitution some degree of intimidation and sabotage fomented largely by persons outside the borders of Rhodesia, the declarations of a state of emergency in Rhodesia and in parts of Rhodesia which have from time to time been made have enabled the Police so to contain these illegal activities as to render them largely ineffective.

10

SWORN TO at SALISBURY this 21st day of April, 1966.

(Signed) F. E. Barfoot

BEFORE ME,

(Signed) R. R. Stenner
.....

Commissioner of Oaths.

29.

NO. 12

In the General
Division

AFFIDAVIT OF CHIEF ZWIMBA

No.12

Case No.GD.247/66

Affidavit of
Chief Zwimba
Dated 26th
April 1966

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

A F F I D A V I T

I, CHIEF ZWIMBA, make oath and say:-

1. I am President of the Council of Chiefs as constituted by Chapter 11
2. In the exercise of its duties and functions as provided by this Act the Council accepts the Constitution of Rhodesia, 1965, as being the only and effective constitution of Rhodesia and the present Government of Rhodesia as the only and effective government.
3. The Council further accepts laws made by the Parliament of Rhodesia as presently constituted and assented to by the Officer Administering the

20

In the General
Division

No.12

Affidavit of
Chief Zwimba
Dated 26th
April 1966
(Contd.)

Government, and similarly accepts
and observes subordinate legislation
enacted under the authority of the
Officer Administering the Government
or a Minister.

- 4. Furthermore, as it is part of our
functions to make representations to
the Government in regard to the
needs and wishes of Africans living
on Tribal Trust Land, the Council,
including myself, maintains close
contact with other chiefs, hoadmen
and kraalheads throughout the Tribal
Trust Land. From my own knowledge,
and from the reports of my fellow
chiefs, I can state that despite
a degree of active intimidations
by a comparatively small number of
persons who are supporters of the
nationalist parties there is an
overwhelming acceptance in the
Tribal Trust Land of the present
Government and the prevailing state
of national affairs.

10

20

SWORN TO at SALISBURY this 26th day of
April 1966.

(Signed) Chief Zwimba
.....

BEFORE ME,

(Signature indecipherable)
.....

Commissioner of Oaths.

AFFIDAVIT OF STANLEY ERNEST
MORRIS

IN THE GENERAL DIVISION OF Case No.GD.247/66
THE HIGH COURT OF RHODESIA

Affidavit of
Stanley Ernest
Morris
Dated 23rd
April 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison Second
Respondent

AFFIDAVIT

I, STANLEY ERNEST MORRIS, hereby make
oath and say:

- 20 1. I am the Chairman of the Public Services
Board (hereinafter called "the Board")
as constituted under the Public Services
Act Chapter 90 (hereinafter called
"the Act").
- 30 2. In the exercise of its functions as
provided by the Act, the Board accepts
the Constitution of Rhodesia, 1965,
as being the only and effective
Constitution of Rhodesia and the present
Government of Rhodesia as being the only
and effective Government of the
Country, and carries out such

In the General
Division

No.13

Affidavit of
Stanley Ernest
Morris
Dated 23rd
April 1966
(Contd.)

instructions as it receives from the
aforesaid Government.

3. The Board further accepts and observes Acts passed by the Parliament of Rhodesia as presently constituted, and assented to by the Officer Administering the Government, and similarly accepts and observes subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister. 10
4. Furthermore, after the assumption of independence on the 11th November, 1965, the Prime Minister advised all public servants of the country to carry on with their duties on the basis and for the reason that the present Government was the only and effective Government of the country. So far as I am aware and subject to paragraph 5 hereof, this advice has been observed throughout the service. 20
5. At the time of the assumption of independence there were in the public service approximately ten thousand persons on the fixed establishment and five thousand temporary employees holding fixed establishment posts. These fifteen thousand persons were composed of approximately one thousand eight hundred and twenty Africans, two hundred and fifty-eight Coloured and Asiatic persons and twelve thousand nine hundred and twenty-two Europeans. During the period from 11th November, 1965, to 31st March, 1966, there were, so far as I am aware, only twenty-two resignations, of which nineteen were made by Europeans and three were made by Africans, which could be attributed to the assumption of independence. 30 40
6. In none of the cases of resignation referred to in paragraph 5 hereof was it found necessary to invoke the

powers conferred by section 3(1) of the Emergency Powers (Control of Government Employees) Regulations, 1965, published in Rhodesia Government Notice No. 737E of 1965. There were no prosecutions for contraventions of section 4 of the aforesaid regulations. Moreover, since the 4th February, 1966 these regulations have lapsed and have been of no further force and effect and of the resignations that have occurred since that date none, so far as I am aware, can be attributed to the assumption of independence.

In the General Division

No.13

Affidavit of Stanley Ernest Morris Dated 23rd April 1966 (Contd.)

10

7. Furthermore, I can state from the actions of the members of the Public Service referred to in paragraph 5 hereof that quite apart from the advice mentioned in paragraph 4 hereof, there is an overwhelming positive acceptance by them of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of Rhodesia.

20

8. I further state that I know of no Acts passed by the Parliament of Rhodesia as presently constituted, and assented to by the Officer Administering the Government, and of subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister which are not accepted and observed by the employees of the Public Service.

30

9. I do not regard myself as being bound by any instructions as to the discharge of my duties which I might receive from any government other than the present Government of Rhodesia.

40

SWORN TO at SALISBURY this 23rd day of April, 1966.

(Signed) S. E. Morris

Before Me,

(Signed) G. B. Clarke

Commissioner of Oaths.

In the General
Division

NO. 14

No.14

AFFIDAVIT OF CHARLES STEPHEN
DAVIES

Affidavit of
Charles Stephen
Davies
Dated 22nd
April 1966

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No.GD.247/66

In the matter between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, CHARLES STEPHEN DAVIES, do hereby
make oath and say:

1. I am the Secretary for African
Education. 20

2. In the exercise of my official duties,
I accept the Constitution of Rhodesia
1965, as being the only and affective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective
Government of the country and I carry
out such instructions as I receive
from the aforesaid Government and
give instructions to my subordinates
accordingly, which instructions are 30
accepted without any question as
to the authority of the aforesaid
Government.

In the General
Division

No.14

Affidavit of
Charles Stephen
Davies
Dated 22nd
April 1966
(Contd.)

10 3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.

20 4. I have no knowledge of the feelings of the personnel of my Ministry towards the matters referred to in paragraphs 2 and 3 hereof, but I can state that since the 11th November 1965, the Ministry has functioned normally and effectively under my control without any objection from the aforesaid personnel as to my authority and with only four persons objecting to the authority of the present Government, which persons, having so objected, resigned.

30 5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.

40 6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the Present Government of Rhodesia and if I did receive such instructions I would not obey them.

SWORN TO at SALISBURY this 22nd day of April, 1966

(Signed) C. S. Davies

Before me,
(Signed) J. A. C. Houlton

Commissioner of Oaths.

In the General
Division

NO. 15

No.15

AFFIDAVIT OF DANIEL ESPACH

Affidavit of
Daniel Espach
Dated 20th
April 1966

IN THE GENERAL DIVISION Case No.GD.247/66
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

10

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, DANIEL ESPACH, do hereby make oath
and say:

1. I am the Acting Secretary for Agriculture.

2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
aforesaid Government and give
instructions to my subordinates
accordingly, which instructions are
accepted without any question as to
the authority of the aforesaid
Government.

20

30

3. I further accept the Parliament of

Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.

In the General
Division

No.15

Affidavit of
Daniel Espach
Dated 20th
April 1966
(Contd.)

10

4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia.

20

5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.

30

6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of

40

In the General
Division

No.15

Affidavit of
Daniel Espach
Dated 20th
April 1966
(Contd.)

their feelings, I am of the opinion
that my attitude to such instructions
is shared by the said personnel.

SWORN TO at SALISBURY this 20th
day of April, 1966.

(Signed) D. E. Espach
.....

BEFORE ME,

.....

Commissioner of Oaths.

No.16

Affidavit of
Donald Henry
Cummings
Dated 9th
March 1966

NO.16

AFFIDAVIT OF DONALD HENRY
CUMMINGS

Case No.GD.247/66

10

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

20

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, DONALD HENRY CUMMINGS, do hereby
make oath and say:

1. I am the Secretary for Commerce and

Industry.

In the General
Division

No.16

Affidavit of
Donald Henry
Cummings
Dated 9th
March 1966
(Contd.)

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government.
- 10
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.
- 20
4. I have no knowledge of the feelings of the personnel of my Ministry towards the matters referred to in paragraphs 2 and 3 hereof but I can state that since the 11th November, 1965, the Ministry has functioned normally and effectively under my control without objection from the said personnel as to my authority or the authority of the present Government.
- 30
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the
- 40

In the General
Division

No.16

Affidavit of
Donald Henry
Cummings
Dated 9th
March 1966
(Contd.)

personnel of my Ministry.

- 6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. I have no knowledge of the feelings of the personnel of my Ministry towards such instructions but I have no reason to believe that their attitude would differ from my own.

10

SWORN TO at SALISBURY this
day of March, 1966.

(Signed) D. H. Cummings
.....

BEFORE ME,

.....

Commissioner of Oaths.

NO. 17

In the General
Division

AFFIDAVIT OF ELDON CHARLES
WILLIAM TROLLIP

No.17

Affidavit of
Eldon Charles
William
Trollip
Dated 26th
April 1966

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, ELDON CHARLES WILLIAM TROLLIP,
do hereby make oath and say:

1. I am the Secretary for Defence.

20 2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective
Government of the country and I
and the civilian personnel of the
Ministry and the commanders and personnel
of the Army and Air Force of Rhodesia
30 obey the instructions of the aforesaid
Government, which instructions are
accepted without any question as
to the authority of the aforesaid
Government.

In the General
Division

No.17

Affidavit of
Eldon Charles
William
Trollip
Dated 26th
April 1966
(Contd.)

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 10
4. Furthermore, from my personal knowledge of the civilian personnel of my Ministry and of the commanders and personnel of the Army and Air Force of Rhodesia, and of their feelings, I can state that there is an overwhelming positive acceptance by them of the Constitution of Rhodesia 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said civilian personnel and commanders and personnel of the Army and Air Force as the only and effective Legislature of Rhodesia. 20 30
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the aforesaid civilian personnel and commanders and personnel of the Army and Air Force. 40
6. I do not consider myself to be bound by any instructions as to the discharge

of my official duties which I might receive from any government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the civilian personnel of my Ministry and of the commanders and personnel of the Army and Air Force of Rhodesia, and of their feelings, I am of the opinion that my attitude to such instructions is shared by them.

10

In the General Division

No.17

Affidavit of
Eldon Charles
William
Trollip
Dated 26th
April 1966
(Contd.)

SWORN TO at SALISBURY this 26th
day of April, 1966

(Signed) E. Trollip
.....

BEFORE ME,

(Signature indecipherable)

Commissioner of Oaths.

In the General
Division

NO. 18

No.18

AFFIDAVIT OF JOSEPH ALFRED
CURTIS HOULTON

Affidavit of
Joseph Alfred
Curtis Houlton
Dated 21st
April 1966

Case No.GD.247/66

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, JOSEPH ALFRED CURTIS HOULTON, do
hereby make oath and say:

1. I am the Acting Secretary for Education. 20

2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and
effective Constitution of Rhodesia
and the present Government of
Rhodesia as being the only and
effective Government of the country
and I carry out such instructions
as I receive from the aforesaid
Government and give instructions
to my subordinates accordingly,
which instructions are accepted
without any question as to the 30

authority of the aforesaid Government.

In the General
Division

—
No.18

Affidavit of
Joseph Alfred
Curtis Houlton
Dated 21st
April 1966
(Contd.)

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.
- 10
4. Furthermore, I can state from the actions of the personnel of my Ministry that there is a general acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only effective Legislature of Rhodesia.
- 20
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.
- 30
6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such
- 40

In the General
Division

No.18

Affidavit of
Joseph Alfred
Curtis Houlton
Dated 21st
April 1966
(Contd.)

instructions I would not obey them.
From my knowledge of the day to day
workings of my Ministry I am of the
opinion that my attitude to such
instructions is shared by the personnel
of the Ministry.

SWORN TO at SALISBURY this
day of April, 1966.

(Signed) J. A. C. Houlton
.....

BEFORE ME,

(Signed) G. L. Squair.....

Commissioner of Oaths.

10

No.19

Affidavit of
Norman Richard
Heathcote
Dated 22nd
April 1966

NO. 19

AFFIDAVIT OF NORMAN RICHARD
HEATHCOTE

Case No.GD.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

20

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, NORMAN RICHARD HEATHCOTE, do
hereby make oath and say:

1. I am the Acting Secretary for External Affairs.
2. In the exercise of my official duties, I accept the Constitution of Rhodesia 1965, as being the only effective Constitution of Rhodesia and the present Government of Rhodesia as being the only effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government.
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.
4. Furthermore, I can state from the actions of the personnel of my Ministry that there is general acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only effective Legislature of Rhodesia.
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia

In the General
Division

No.19

Affidavit of
Norman Richard
Heathcote
Dated 22nd
April 1966
(Contd.)

In the General
Division

No.19

Affidavit of
Norman Richard
Heathcote
Dated 22nd
April 1966
(Contd.)

and assented to by the Officer
Administering the Government and sub-
ordinate legislation enacted under
the authority of the Officer
Administering the Government or a
Minister of the present Government
are accepted and observed by the
personnel of my Ministry.

- 6. I do not consider myself to be bound
by any instructions as to the discharge
of my official duties which I might
receive from any Government other than
the present Government of Rhodesia
and if I did receive such instructions
I would not obey them. From my
personal knowledge of the day-to-day
workings of my Ministry and of their
feelings, I am of the opinion that
my attitude to such instructions is
shared by the said personnel.

10

20

SWORN TO at SALISBURY this
day of April, 1966.

(Signed) .N. R. Heathcote

BEFORE ME,

(Signed) E. Trollip
.....

Commissioner of Oaths.

NO. 20

AFFIDAVIT OF MAURICE HOLLAND
WEBSTER

Case No.GD.247/66

In the General
Division

No.20

Affidavit of
Maurice Holland
Webster
Dated 22nd
April 1966

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, MAURICE HOLLAND WEBSTER, do hereby
make oath and say:

- 20 1. I am the Secretary for Health.
- 2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the present
Government of Rhodesia as being the
only and effective Government of the
country and I carry out such instructions
as I receive from the aforesaid
Government.
- 30 3. I further accept the Parliament of
Rhodesia constituted under the
aforesaid Constitution as the only
and effective Legislature of Rhodesia
and accept and observe Acts passed

In the General
Division

No. 20

Affidavit of
Maurice Holland
Webster
Dated 22nd
April 1966
(Contd.)

by the aforesaid Parliament and
assented to by the Officer Administering
the Government and I similarly
accept and observe subordinate
legislation enacted under the authority
of the Officer Administering the
Government or a Minister of the present
Government.

- 4. I have no knowledge of the feelings of the personnel of my Ministry towards the matters referred to in paragraphs 2 and 3 hereof, but I can state that since the 11th November, 1965, the Ministry has functioned normally and effectively under my control without objection from the aforesaid personnel as to my authority. 10

- 5. I further state that my Ministry in its functions conforms with the position resulting from the effectiveness of the present Parliament, the Officer Administering the Government and the Ministers of the present Government, in relation to the making of laws and observes those laws. 20

- 6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. I have no knowledge of the feelings of the personnel of my Ministry in this regard but with the possible exception of three persons I have no reason to believe that their attitude to such instructions would be any different. 30

SWORN TO at SALISBURY this 22nd day of
April, 1966.

(Signed) M. H. Webster.....

BEFORE ME,

(Signature indecipherable).....

Commissioner of Oaths.

40

NO. 21

AFFIDAVIT OF LEO CARDWELL
ROSS

In the General
Division

No.21

Affidavit of
Leo Cardwell
Ross
Dated 20th
April 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, LEO CARDWELL ROSS, do hereby make
oath and say:

- 20 1. I am the Secretary for Information,
Immigration and Tourism.
- 2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
30 aforesaid Government and give
instructions to my subordinates
accordingly, which instructions are
accepted without any question as to
the authority of the aforesaid Government.

In the General
Division

No.21

Affidavit of
Leo Cardwell
Ross
Dated 20th
April 1966
(Contd.)

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 10
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 20
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry. 30
6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the 40

personnel of my Ministry and of their feelings, I am of the opinion that my attitude to such instructions is shared by the said personnel.

In the General Division

No.21

Affidavit of
Leo Cardwell
Ross
Dated 20th
April 1966
(Contd.)

SWORN TO at SALISBURY this 20th day of April, 1966.

(Signed) L. C. Ross
.....

BEFORE ME,
(Signature indecipherable)
.....
Commissioner of Oaths.

NO. 22

No.22
Affidavit of
William Hostes
Herault Nicolle
Dated 27th
April 1966

10

AFFIDAVIT OF WILLIAM HOSTES
HERAULT NICOLLE

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

20

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, WILLIAM HOSTES HERAULT NICOLLE, do hereby make oath and say:

In the General
Division

No.22

Affidavit of
William Hostes
Herault Nicolle
Dated 27th
April 1966
(Contd.)

1. I am the Secretary for Internal Affairs. 10

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government. 10

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer administering the Government or a Minister of the present Government. 20

4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 30

5. I further state that Acts passed by the aforesaid Parliament of 40

Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.

In the General Division

No.22

Affidavit of William Hostes Herault Nicolle Dated 27th April 1966 (Contd.)

10 6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of their feelings, I am of the opinion, that my attitude to such instructions is shared by the said personnel.

20 7. There are approximately two million nine hundred thousand Africans living on Tribal Trust Land out of a total African population in Rhodesia of approximately four million. Of this total African population in Rhodesia approximately four hundred thousand are aliens from Malawi, Zambia, Mozambique and other African States, temporarily living in Rhodesia.

30 SWORN TO at SALISBURY this 27th day of April, 1966.

(Signed) W. H. H. Nicolle...

BEFORE ME,

(Signed) R. J. Powell
Commissioner of Oaths

In the General
Division

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

No.23

Case No.GD.247/66

Affidavit of
Neil Forsyth
Grant
Dated 2nd
April 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

10

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, NEIL FORSYTH GRANT, do hereby
make oath and say:

1. I am the Secretary for Justice.
2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective
Government of the country and I carry
out such instructions as I receive
from the aforesaid Government and
give instructions to my subordinates
accordingly, which instructions are
accepted without any question as to
the authority of the aforesaid
Government.
3. I further accept the Parliament of
Rhodesia constituted under the
aforesaid Constitution as the only
and effective Legislature of Rhodesia
and accept and observe Acts passed

20

30

by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.

In the General
Division

No.23

Affidavit of
Neil Forsyth
Grant
Dated 2nd
April 1966
(Contd.)

- 10 4. Furthermore, I can state from my personal knowledge of the officers of my Ministry (including the Prison Officers) and of their feelings that there is an overwhelming positive acceptance by them of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted as the only and effective Legislature of Rhodesia by an overwhelming majority. There is a minority whose views are unknown but I am able to say that, whatever their views, they carry out the instructions of their superiors and there is no indication that they do not accept this Constitution.
- 20
- 30
- 40 5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.
6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I

In the General
Division

No.23

Affidavit of
Neil Forsyth
Grant
Dated 2nd
April 1966
(Contd.)

would not obey them. From my
personal knowledge of the personnel
of my Ministry and of their feelings,
I verily believe that my attitude
to such instructions is shared by the
said personnel.

SWORN TO at SALISBURY this 2nd
day of April, 1966.

(Signed) N. F. Grant
.....

BEFORE ME,

(Signed) P. Claypole
.....
Commissioner of Oaths.

10

No.24

Affidavit of
John Armstrong
Dated 20th
April 1966

NO. 24

AFFIDAVIT OF JOHN ARMSTRONG

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

20

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT

I, JOHN ARMSTRONG, do hereby make
oath and say:

1. I am the Secretary for Labour and
Social Welfare.

30

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the Country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government.
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia.
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the

In the General
Division

No.24

Affidavit of
John Armstrong
Dated 20th
April 1966
(Contd.)

61.

NO. 25

AFFIDAVIT OF AVON MONTGOMERY
BRUCE-BRAND

In the General
Division

No.25

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No.GD.247/66

Affidavit of
Avon Montgomery
Bruce-Brand
Dated 20th
April 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, AVON MONTGOMERY BRUCE-BRAND, do
hereby make oath and say:

- 20 1. I am the Secretary for Law and Order.
2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
aforesaid Government and give
30 instructions to my subordinates
accordingly, which instructions are
accepted without any question as to
the authority of the aforesaid Govern-
ment.
3. I further accept the Parliament of

In the General
Division

No.25

Affidavit of
Avon Montgomery
Bruce-Brand
Dated 20th
April 1966
(Contd.)

- Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 10
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 20
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry. 30
6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of their feelings, I am of the opinion that 40

my attitude to such instructions
is shared by the said personnel.

In the General
Division

SWORN TO at SALISBURY this 20th day
of April, 1966.

(Signed) A. M. Bruce-Brand
.....

BEFORE ME,

(Signed) J. A. Marshall
.....

Commissioner of Oaths.

No.25

Affidavit of
Avon Montgomery
Bruce-Brand
Dated 20th
April 1966
(Contd.)

NO. 26

AFFIDAVIT OF EDWARD GEORGE
GARDNER MARSH

No.26

Affidavit of
Edward George
Gardner Marsh
Dated 20th
April 1966

10 IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

20 FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, EDWARD GEORGE GARDNER MARSH, do
hereby make oath and say:

1. I am the Secretary for Local Government
and Housing.

In the General
Division

No.26

Affidavit of
Edward George
Gardner Marsh
Dated 20th
April 1966
(Contd.)

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, 10 which instructions are accepted without any question as to the authority of the aforesaid Government.
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 20
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 30 40
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted

under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.

In the General Division

No.26

Affidavit of
Edward George
Gardner Marsh
Dated 20th
April 1966
(Contd.)

6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of their feelings, I am of the opinion that my attitude to such instructions is shared by the said personnel.

10

SWORN TO at SALISBURY this 20th day of April, 1966.

(Signed) E. G. G. Marsh
.....

20

BEFORE ME,
(Signed) W. P. S. Poyall....
Commissioner of Oaths.



In the General
Division

No.27

NO.27

AFFIDAVIT OF KENNETH KERSHAW
PARKER

Affidavit of
Kenneth Kershaw
Parker

Dated 20th
April 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, KENNETH KERSHAW PARKER, do hereby
make oath and say:

1. I am the Secretary for Mines and Lands. 20
2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
aforesaid Government and give instructions
to my subordinates accordingly,
which instructions are accepted
without any question as to the authority
of the aforesaid Government. 30
3. I further accept the Parliament of

- 10 Rhodesia constituted under the
aforesaid Constitution as the only
and effective Legislature of Rhodesia
and accept and observe Acts passed
by the aforesaid Parliament and
assented to by the Officer Administering
the Government and I similarly accept
and observe subordinate legislation
enacted under the authority of the
Officer Administering the Government
or a Minister of the present Government.
4. Furthermore, I can state from my personal
knowledge of the personnel of my
Ministry and of their feelings that
there is an overwhelming positive
acceptance by the aforesaid personnel
of the Constitution of Rhodesia, 1965,
as being the only and effective
20 Constitution of Rhodesia and of the
present Government of Rhodesia as being
the only and effective Government of the
country. The Parliament of Rhodesia
constituted under the aforesaid
Constitution is likewise accepted by
the said personnel as the only and
effective Legislature of Rhodesia.
5. I further state that Acts passed by the
aforesaid Parliament of Rhodesia and
assented to by the Officer Administering
30 the Government and subordinate legislation
enacted under the authority of the
Officer Administering the Government or
a Minister of the present Government
are accepted and observed by the
personnel of my Ministry.
6. I do not consider myself to be bound
by any instructions as to the discharge
of my official duties which I might
receive from any Government other than
40 the present Government of Rhodesia and
if I did receive such instructions I
would not obey them. From my personal
knowledge of the personnel of my
Ministry and of their feelings, I am of
the opinion that my attitude to such

In the General
Division

instructions is shared by the said
personnel.

No.27

Affidavit of
Kenneth Kershaw
Parker
Dated 20th
April 1966
(Contd.)

SWORN TO at SALISBURY this 20th day
of April, 1966.

(Signed) K. K. Parker
.....

BEFORE ME,

(Signed) R. J. Christie
.....

Commissioner of Oaths.

No.28

Affidavit of
Charles Royal
Dickenson
Dated 20th
April 1966

NO. 28

AFFIDAVIT OF CHARLES ROYAL
DICKENSON

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

10

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

20

AFFIDAVIT

I, CHARLES ROYAL DICKENSON, do hereby
make oath and say:

1. I am the Postmaster-General.
2. In the exercise of my official duties,

I accept the Constitution of Rhodesia 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government.

In the General
Division

No.28

Affidavit of
Charles Royal
Dickenson
Dated 20th
April 1966
(Contd.)

10

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.

20

30

4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia.

40

5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer

In the General
Division

No.28

Affidavit of
Charles Royal
Dickenson
Dated 20th
April 1966
(Contd.)

Administering the Government or a
Minister of the present Government are
accepted and observed by the personnel
of my Ministry.

- 6. I do not consider myself to be bound
by any instructions as to the discharge
of my official duties which I might
receive from any Government other than
the present Government of Rhodesia and
if I did receive such instructions I
would not obey them. From my personal
knowledge of the personnel of my Ministry
and of their feelings, I am of the opinion
that my attitude to such instructions
is shared by the said personnel.

10

SWORN TO at SALISBURY this 20th day of
April 1966.

(Signed) C. R. Dickenson
.....

BEFORE ME,

(Signed) G. Meaker
.....

Commissioner of Oaths.

71.

NO. 29

AFFIDAVIT OF GERALD BRYAN CLARKE

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Case No. GD.247/66

In the General
Division

No.29

Affidavit of
Gerald Bryan
Clarke
Dated 22nd
April 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, GERALD BRYAN CLARKE, do hereby make
oath and say:

- 20 1. I am the Secretary to the Prime Minister
and the Secretary to the Cabinet of
Rhodesia.
- 30 2. In the exercise of my official duties,
I accept the Constitution of Rhodesia,
1965, as being the only and effective
Constitution of Rhodesia and the
present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
aforesaid Government and give
instructions to my subordinates
accordingly, which instructions are
accepted without any question as to the
authority of the aforesaid Government.

In the General
Division

No.29

Affidavit of
Gerald Bryan
Clarke
Dated 22nd
April 1966
(Contd.)

3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 10
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 20
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry. 30
6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of their feelings, I am of the opinion that my attitude to 40

such instructions is shared by the said personnel.

In the General Division

SWORN TO at SALISBURY this 22nd day of April, 1966.

No.29

(Signed) G. B. Clarke
.....

Affidavit of Gerald Bryan Clarke
Dated 22nd April 1966
(Contd.)

BEFORE ME,

(Signed) L. G. Ross
.....

Justice of the Peace

NO. 30

No.30

AFFIDAVIT OF GEOFFREY HARRIS BRADBURY

Affidavit of Geoffrey Harris Bradbury
Dated 20th April 1966

10 IN THE GENERAL DIVISION OF THE HIGH COURT OF RHODESIA

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of Justice and of Law and Order

First Respondent

- and -

20 FREDERICK PHILLIP GEORGE
in his capacity as Superintendent of the Gwelo Prison

Second Respondent

AFFIDAVIT

I, GEOFFREY HARRIS BRADBURY, do hereby make oath and say:

- 1. I am the Acting Commissioner of Roads and Road Traffic.

In the General
Division

No.30

Affidavit of
Geoffrey Harris
Bradbury
Dated 20th
April 1966
(Contd.)

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government. 10
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government. 20
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia. 30
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer Administering the Government and subordinate legislation enacted 40

under the authority of the Officer Administering the Government or a Minister of the present Government are accepted and observed by the personnel of my Ministry.

In the General Division

No.30

Affidavit of
Geoffrey Harris
Bradbury
Dated 20th
April 1966
(Contd.)

10 6. I do not consider myself to be bound by any instructions as to the discharge of my official duties which I might receive from any Government other than the present Government of Rhodesia and if I did receive such instructions I would not obey them. From my personal knowledge of the personnel of my Ministry and of their feelings, I am of the opinion that my attitude to such instructions is shared by the said personnel.

20 SWORN TO at SALISBURY this 20th day of April, 1966.

(Signed) G. H. Bradbury
.....

BEFORE ME,

(Signature indecipherable)
.....

Commissioner of Oaths.

In the General
Division

No.31

NO.31

AFFIDAVIT OF DAVID WATSON
YOUNG

Affidavit of David IN THE GENERAL DIVISION OF
Watson Young THE HIGH COURT OF RHODESIA
Dated 23rd
April 1966

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

10

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Super- Respondent
intendent of the Gwelo Prison

AFFIDAVIT

I, DAVID WATSON YOUNG, do hereby
make oath and say:

1. I am the Acting Secretary to the Treasury. 20

2. In the exercise of my official duties,
I accept the Constitution of
Rhodesia, 1965, as being the only and
effective Constitution of Rhodesia and
the present Government of Rhodesia as
being the only and effective Government
of the country and I carry out such
instructions as I receive from the
aforesaid Government and give
instructions to my subordinates
accordingly, which instructions are
accepted without any question as to
the authority of the aforesaid
Government. 30

3. I further accept the Parliament of

Rhodesia constituted under the
 aforesaid Constitution as the only and
 effective Legislature of Rhodesia
 and accept and observe Acts passed
 by the aforesaid Parliament and
 assented to by the Officer
 Administering the Government and I
 similarly accept and observe sub-
 ordinate legislation enacted under
 the authority of the Officer
 Administering the Government or a
 Minister of the present Government.

In the General
 Division

 No. 31

Affidavit of
 David Watson
 Young
 Dated 23rd
 April 1966
 (Contd.)

10

4. Furthermore, I can state from my
 personal knowledge of the personnel of
 my Ministry and of their feelings that
 there is an overwhelming positive accept-
 ance by the aforesaid personnel of the
 Constitution of Rhodesia, 1965, as
 being the only and effective Constitution
 of Rhodesia and of the present Government
 of Rhodesia as being the only and effective
 Government of the country. The Parliament
 of Rhodesia constituted under the afore-
 said Constitution is likewise accepted by
 the said personnel as the only and effective
 Legislature of Rhodesia.

20

5. I further state that Acts passed by the
 aforesaid Parliament of Rhodesia and
 assented to by the Officer Administering
 the Government and subordinate
 legislation enacted under the authority
 of the Officer Administering the Govern-
 ment or a Minister of the present Govern-
 ment are accepted and observed by the
 personnel of my Ministry.

30

6. I do not consider myself to be bound by
 any instructions as to the discharge of
 my official duties which I might receive
 from any Government other than the
 present Government of Rhodesia and if
 I did receive such instructions I would
 not obey them. From my personal knowledge
 of the personnel of my Ministry and of
 their feelings, I am of the opinion that
 my attitude to such instructions is

40

In the General
Division

No.31

Affidavit of
David Watson
Young
Dated 23rd
April 1966
(Contd.)

shared by the said personnel.

SWORN TO at SALISBURY this 23rd day of
April 1966.

(Signed) D. W. Young
.....

BEFORE ME,

(Signed) V. Barnes-Pope
.....

Commissioner of Oaths

No.32

Affidavit of
Harry William
Heyward Wallis
Dated 23rd
April 1966

NO. 32

AFFIDAVIT OF HARRY WILLIAM
HEYWARD WALLIS.

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

10

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

20

AFFIDAVIT

I, HARRY WILLIAM HEYWARD WALLIS, do
hereby make oath and say:

1. I am the Director of Water Development,
appointed in terms of section 142(1)
of The Water Act /Chapter 268/ as
amended.

2. In the exercise of my official duties, I accept the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and the present Government of Rhodesia as being the only and effective Government of the country and I carry out such instructions as I receive from the aforesaid Government and give instructions to my subordinates accordingly, which instructions are accepted without any question as to the authority of the aforesaid Government.
- 10
3. I further accept the Parliament of Rhodesia constituted under the aforesaid Constitution as the only and effective Legislature of Rhodesia and accept and observe Acts passed by the aforesaid Parliament and assented to by the Officer Administering the Government and I similarly accept and observe subordinate legislation enacted under the authority of the Officer Administering the Government or a Minister of the present Government.
- 20
4. Furthermore, I can state from my personal knowledge of the personnel of my Ministry and of their feelings that there is an overwhelming positive acceptance by the aforesaid personnel of the Constitution of Rhodesia, 1965, as being the only and effective Constitution of Rhodesia and of the present Government of Rhodesia as being the only and effective Government of the country. The Parliament of Rhodesia constituted under the aforesaid Constitution is likewise accepted by the said personnel as the only and effective Legislature of Rhodesia.
- 30
- 40
5. I further state that Acts passed by the aforesaid Parliament of Rhodesia and assented to by the Officer

In the General
Division

No.32

Affidavit of
Harry William
Heyward Wallis
Dated 23rd
April 1966
(Contd.)

In the General
Division

No.32

Affidavit of
Harry William
Heyward Wallis
Dated 23rd
April 1966
(Contd.)

Administering the Government and
subordinate legislation enacted under
the authority of the Officer
Administering the Government or a
Minister of the present Government
are accepted and observed by the
personnel of my Ministry.

- 6. I do not consider myself to be bound
by any instructions as to the discharge
of my official duties which I might
receive from any Government other
than the present Government of Rhodesia
and if I did receive such instructions
I would not obey them. From my
personal knowledge of the personnel of
my Ministry and of their feelings, I
am of the opinion that my attitude
to such instructions is shared by
the said personnel.

10

SWORN TO at SALISBURY this 23rd day of
April, 1966.

20

(Signed) H. W. H. Wallis.....

BEFORE ME,

(Signed) W. H. R. Allen.....

Commissioner of Oaths



NO. 33

AFFIDAVIT OF NOEL HUGH BOTHA
BRUCE

In the General
Division

No.33

IN THE GENERAL DIVISION OF
THE HIGH COURT OF RHODESIA

Affidavit of
Noel Hugh
Botha Bruce
Dated 21st
April 1966

Case No.GD.247/66

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, NOEL HUGH BOTHA BRUCE, hereby make oath
and say:

20

1. That I am the Governor of the Reserve Bank of Rhodesia and was appointed as such on the 22nd May, 1964.
2. Since 11th November, 1965, the Government of the United Kingdom has adopted various measures in an attempt to damage the economy of Rhodesia; these measures include, inter alia:-

30

- (a) the placing of the external assets of the said Bank under the control of a Board of Directors in London appointed by the British Government with the result that these assets cannot be used by the Reserve Bank of Rhodesia;

In the General
Division

No.33

Affidavit of
Noel Hugh
Botha Bruce
Dated 21st
April 1966
(Contd.)

- (b) the exclusion of Rhodesia from the sterling area with the result that Rhodesia has lost the privileges associated with membership of the sterling area;
- (c) the prohibition of exports of goods to and imports of goods from Rhodesia with limited exceptions;
- (d) the taking of active steps to persuade other countries to adopt measures similar to those described above; 10
- (e) the proposal of a resolution for the consideration of the United Nations Security Council to the effect that all steps should be taken, including the use of force if necessary, to prevent the supply of crude oil to Rhodesia through Beira. Such resolution was passed by the Security Council on or about 9th April, 1966. 20

3. It is part of my duties to deal with the measures described in paragraph 2 hereof and I can say that the said Bank has made satisfactory arrangements to offset international payments and Rhodesia is surviving such measures; furthermore there is nothing to show that Rhodesia will not continue to survive them. 30

SWORN TO at SALISBURY this 21st day of April, 1966.

(Signed) N. H. B. Bruce

BEFORE ME,

(Signed) R. E. Parke

Commissioner of Oaths.

83.

NO. 34

AFFIDAVIT OF CORNELIUS EWEN
MACLEAN GREENFIELD

Case No. GD. 247/66

In the General
Division

No. 34

Affidavit of
Cornelius Ewen
Maclean
Greenfield
Dated 25th
April 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, CORNELIUS EWEN MACLEAN GREENFIELD,
do hereby make oath and say:

- 20 1. I am the Chairman of the Economic
Advisory Committee established by
the present Government of Rhodesia to
assist in overcoming economic sanctions
which have been or which may be
imposed by the British Government
and other Governments against Rhodesia.
- 30 2. It is my duty to assist and advise the
present Government of Rhodesia on
means for overcoming the said
sanctions and for maintaining and
restoring the economy of the country.
3. In the exercise of my functions I
have access to information relevant

In the General
Division

No. 34

Affidavits of
Cornelius Ewen
Maclean
Greenfield
Dated 25th
April 1966
(Contd.)

to the effect of the economic sanctions applied against Rhodesia both from Government sources (including information of a confidential and secret nature), and from non-Government sources, more particularly from sources in commerce and industry.

4. The economic measures so far taken against Rhodesia take the broad forms of - 10
- (a) attempting to prohibit and prevent the importation of goods into Rhodesia, including petroleum.
 - (b) attempting to prohibit and prevent the export of Rhodesian products to Britain and other countries;
 - (c) the freezing of Rhodesian financial assets overseas and the exclusion of Rhodesia from the sterling area, and attempting to prevent and disrupt foreign exchange transactions between Rhodesia and other countries; and 20
 - (d) naval and other action, in conformity with a resolution passed by the Security Council of the United Nations Organisation on or about the 9th April, 1966, to prevent the supply of oil to Rhodesia through Beira. 30
5. The effects of the economic measures so far taken by the British Government against Rhodesia, and of those measures taken by other Governments in support of the British Government, have been met by appropriate action taken both by the Ministries of the Rhodesian Government and by persons and organisations in the private section of the economy. The measures taken by these Ministries have been necessary to ensure the maintenance of good 40

government in Rhodesia and the well-being of the people thereof.

In the General Division

No.34

- 6. Rhodesia has successfully survived the economic measures which have been applied to Rhodesia by the British Government, and there is nothing, in my judgment, to show that Rhodesia will not continue to survive them.

Affidavits of
Cornelius Ewen
Maclean
Greenfield
Dated 25th
April 1966
(Contd.)

10 SWORN TO at SALISBURY this 25th day of
APRIL, 1966.

(Signed) Cornelius Greenfield
.....

BEFORE ME,
(Signed) D. C. Muir
.....

Commissioner of Oaths

In the General
Division

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

No.35

Case No.GD.247/66

Index of Applicant's
Replying Affidavits.

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister First
of Justice and of Law and Respondent
Order

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison Second
Respondent

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In the General
Division

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

No.36

Case No.GD.247/66

Affidavit of
Stella
Madzimbamuto
Dated
31st May
1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

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FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

APPLICANT'S REPLYING AFFIDAVIT

I, STELLA MADZIMBAMUTO, hereby make
oath and say that:-

AD AFFIDAVIT OF FIRST RESPONDENT

1. Ad paragraph 2

(a) I refer to paragraphs 5, 6, 7 and 8
hereof and say that in as much
as the First Respondent asserts
that he holds office as a Minister
of the Government of Rhodesia
constituted under the Constitution
of Rhodesia, 1965 (hereinafter
referred to as "the alleged
constitution") he denies that
he holds office under and by
virtue of the Constitution of
Southern Rhodesia, 1961, which is
the only authority under which
such office can lawfully be
held. In the premises, and
notwithstanding the allegation
contained in paragraph 3 of my
original affidavit, I say that the
Respondent does not lawfully hold

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office as Minister of Justice
and of Law and Order.

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(b) Alternatively, if the Respondent
does lawfully hold office I say
that he does so under and by
virtue of the Constitution of
Southern Rhodesia, 1961.

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2. Ad paragraphs 5 and 6

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I deny that the Emergency Powers
(Maintenance of Law and Order)
Regulations, 1966, or the alleged
proclamation were lawful or of any
force or effect.

3. Ad paragraph 8

I refer to paragraphs 10, 11, 12 and
13 hereof.

4. Add paragraph 9

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(a) I deny that the original detention
of my husband or his continued
detention was or is necessary or
expedient in the public interest
or the preservation of peace or
the maintenance of order in Rhodesia
or for the good government thereof,
and I refer to paragraph 10 of my
original affidavit and paragraph 3
of the First Respondent's affidavit.

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(b) I say that no facts have been put
forward and that no facts exist
which could be put forward, to
show that my husband's detention
was or is necessary or expedient as
aforesaid or to justify the First
Respondent's alleged opinion that it
was and is necessary and expedient
as aforesaid.

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(c) As regards the second sentence and
subsequent portions of paragraph
9 of the first Respondent's
Affidavit I have no knowledge of

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the opinion held by members of the successive Governments referred to, and I say that such opinions are irrelevant. In any event, I deny that my husband has been or is a serious threat to the peace, order and good government of Rhodesia.

(d) I respectfully submit that, in the absence of evidence of facts justifying the opinion expressed in the first sentence of paragraph 9 of the First Respondent's affidavit and the belief alleged in paragraph 2 of annexure "A" thereto, the only inference reasonably to be drawn from the fact that my husband's removal from the Sengwe Restriction area for detention in Gwelo Prison was ordered by the First Respondent so shortly before the purported declaration of independence is that such detention formed part of the preparations for such declaration and was wholly, or alternatively partly, for the purpose of aiding and furthering the aims of the rebellion in which the First Respondent participated, and that my husband's continued detention after 4th February, 1966, was for the same purpose.

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AD AFFIDAVIT OF CLIFFORD WALTER DUPONT

5. Ad paragraph 1

I deny paragraph 1 and say that the deponent occupies no lawful office and lawfully exercises no functions, duties and powers, and that the alleged constitution is invalid and of no force and effect.

6. Ad paragraph 2

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I admit that on 11th November, 1965, certain persons, including the deponent and the First Respondent, who theretofore

had been Ministers of the Government of Rhodesia, wrongfully and unlawfully signed a document purporting to declare Rhodesia to be a sovereign independent state and purporting to adopt, enact and give to Rhodesia the alleged constitution which was published as alleged. I say that none of such actions was of any force or effect.

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7. Ad paragraph 3

(a) If, as appears to be the case and as I shall hereafter assume, the deponent, the First Respondent and the makers of other opposing affidavits by "Government" mean the persons who have since 11th November, 1965, purported to exercise powers and carry out functions as Ministers or Deputy Ministers in the Government of Rhodesia, then I admit that they have done and do so in accordance with the alleged constitution, and that they regard and have at all times since its purported enactment regarded it as the only effective constitution of Rhodesia. The said persons will hereafter be referred to as "the alleged Ministry".

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(b) If "the alleged Ministry" or any of them lawfully hold office as Ministers or Deputy Ministers in the Government of Rhodesia, which in view of the allegations contained in paragraph 2 of the First Respondent's affidavit and paragraphs 1, 2 and 3 of the deponent's affidavit I deny, then I say that they hold office in terms of the Constitution of Southern Rhodesia, 1961 from which alone their powers derive.

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(c) I deny that the alleged Ministry has governed in accordance with the alleged constitution, and I respectfully draw attention to the failure of the alleged Ministry even to attempt to enforce certain regulations promulgated in terms of the alleged constitution, as more fully appears from paragraph 8(1) (c) below.

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8. I say that in making the allegations contained in paragraphs 4, 5, 6, 7, 8 and 9 the deponent must of necessity be relying on opinions conveyed and information given to him by third persons, that he has no personal knowledge of the matters alleged, that he expresses opinions which are inadmissible as evidence, and that the said paragraphs should be struck out. If, however, this Honourable Court should admit the said paragraphs then I reply thereto as follows:-

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(1) Ad paragraph 4

I deny that the people of Rhodesia have overwhelmingly conformed to or accepted the alleged ministry. More particularly I say that:

(a) the overwhelming majority of the African people are opposed to the purported declaration of independence and to the alleged Ministry and the alleged constitution. In this connection I refer to the affidavits filed herewith;

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(b) the overwhelming majority of the representatives of the Churches and Christian organisations in Rhodesia have expressed their opposition to the purported declaration of independence and to the alleged Ministry and the alleged constitution, as will

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appear from the affidavits
filed herewith;

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- 10 (c) the national press openly and
successfully flouted the
alleged constitution and the
alleged Ministry by refusing
to comply with section 5 of
the Emergency Powers (Control
of Publications) Regulations,
1966, which the Third Respondent
purported to make on or about
5th February, 1966;
- (d) there is no admissible evidence
that the alleged Ministry has
received the support of the armed
forces of Rhodesia;
- 20 (e) the said armed forces, the British
South Africa Police and the Public
Services were, after the events
referred to in paragraph 6 hereof,
advised by the Governor and the
Prime Minister of the United Kingdom
to maintain law and order in
Rhodesia and carry on with their
normal tasks, as will appear from
the affidavits filed herewith;
- 30 (f) the expressed opinions of the
Council of Chiefs are not
representative of the opinions of
the African people of Rhodesia.

(2) Ad paragraph 5

- 40 (a) I deny that the alleged Ministry
is in complete and effective
control within the territory of
Rhodesia or exercises authority
over all the people therein. I
respectfully refer in this
regard to sub-paragraph (1) (c),
of this paragraph, which I submit
shows that the alleged Ministry,
when challenged or opposed, has
no confidence in its ability
to enforce its own purported
laws through the courts, and in

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fact has no such ability save by physical force and without recourse to the courts;

(b) Further and in any event I deny that the alleged Ministry is or can be in complete and effective control within the territory of Rhodesia or exercise authority over all the people therein unless and until there is a judiciary which has decided to accept and give its support to the actions referred to in paragraph 6 hereof, and there is no such judiciary;

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(c) I deny that there is a state of emergency in existence;

(d) I respectfully draw attention to paragraph 11 of the deponent's own affidavit which admits the existence on the 4th February of serious and extensive opposition to the continued existence of the alleged Ministry and to its exercise of authority;

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(e) I deny that there is no bar to lawful political activity or opposition. I say that since 11th November, 1965, numerous persons have been detained without trial and lawful opposition has been unlawfully silenced.

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(3) Ad paragraph 6

I admit that the British Government has not yet taken steps by physical force within the country to make its authority and its laws operative within Rhodesia, but I deny that such authority and laws are ineffective within the country. I refer also in this regard to paragraph 8(4)(b) below.

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(4) Ad paragraph 7

(a) I deny that Rhodesia has

assumed sovereign independence or indeed that any but certain individuals, the number of whom is unknown either to the deponent or to me, so claim;

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10 (b) I deny that Rhodesia has
successfully functioned as a
sovereign independent state or
has been fully capable of
carrying on its own international
affairs. On the contrary, no
country has afforded Rhodesia
recognition as a sovereign
independent state either de jure
or even de facto, and no
country has denied the authority
of Britain in relation to
Rhodesia's affairs. In particular,
20 no country has challenged the
legality of the appointment of
the British Government of the
London Board of the Reserve Bank
of Rhodesia, and no reserve bank
of any country has declined to
comply with the instructions of
the said London Board in respect
of Rhodesian assets held by it.

(5) Ad paragraph 8

30 I submit that the opinions therein
advanced, even if relevant (which is
denied), are matters which it is the
province of the court to decide. In
any event, for the reasons advanced
above, I deny the allegations therein
contained.

(6) Ad paragraph 9

40 (a) I deny that the United Kingdom
Government has disavowed the
intention to use force, as is
alleged in the first sentence
of paragraph 9. On the contrary,
the United Kingdom Government
has repeatedly said that force
would have to be considered if

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there were a breakdown of law and order in the country, or on the request of the Governor. Furthermore, I respectfully point out that force has already been used in relation to goods, namely oil, destined for Rhodesia. Furthermore the British Government has repeatedly reaffirmed its determination to bring to an end what Her Majesty the Queen described on 21st April of this year as "the illegal regime", in Rhodesia;

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- (b) I submit that it is ludicrous to suggest that Britain does not have the capacity to bring to an end the said illegal regime or that she will not succeed in doing so with or without the use of direct internal force.

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9. Ad paragraph 10

I deny that the said Parliament, the majority of whose members purported to sit by virtue of the alleged constitution, was lawfully or properly in session, and I deny that the said resolution was of any force or effect.

10. Ad paragraph 11

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- (a) I say that the deponent had no authority to declare that a state of emergency existed in Rhodesia;

- (b) I say that the purpose of the purported declaration of a state of emergency was wholly, alternatively predominantly, alternatively partly in order to aid and further the aims of the rebellion initiated by the acts referred to in paragraph 6 hereof. In this regard I refer to paragraph 12 hereof and

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Annexure "A" hereto;

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(c) I say that the alleged grounds for the purported declaration of a state of emergency are merely baldly stated in, in effect, the words of section 3 of the Emergency Powers Act (Chapter 33) and are not specified or substantiated, and that no facts exist by which they could be substantiated, save as set out in paragraph 12 hereof.

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11. Ad paragraph 12

(a) I say that the deponent had no authority to make the regulations referred to, which are of no force or effect;

(b) I say that the purpose of the purported regulations was wholly, alternatively predominantly, alternatively partly in order to aid and further the aims of the said rebellion.

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12. In support of the allegations contained in paragraphs 10(b) and 11(b) hereof I refer to Annexure "A" hereto, being a press statement which on or about 2nd February, 1966, the First Respondent caused the alleged Rhodesia Ministry of Information to publish and which contains the reasons for the First Respondent's request to the said Parliament that it should resolve that a proclamation be issued on or before 4th February, 1966 declaring the existence of a state of emergency. On 2nd February, 1966 the First Respondent did so request the said Parliament, and in doing so used the words set out in Annexure "A" save for a few immaterial departures therefrom, as will appear from the affidavit of ERIC WILLIAM PAPPS filed herewith. I say that in as much as the deponent purports to exercise his

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alleged functions, duties and powers in terms of the alleged constitution, in purporting on 4th February, 1966, to declare a state of emergency and in purporting to make the Emergency Powers (Maintenance of Law and Order) Regulations, 1966, he must have acted on the advice of the alleged Ministry, in particular the First Respondent. In the premises the purpose of the purported declaration of an emergency and of the purported regulations appear from Annexure "A" hereto.

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13. Ad paragraph 13

(a) I deny that the purported proclamation of a state of emergency or the purported making of the said regulations were measures necessary for the preservation of peace and the maintenance of order in Rhodesia and for the good government thereof, but I admit that the said measures were considered necessary, as indeed they are, by the deponent and First Respondent to maintain the alleged Ministry in power;

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(b) I respectfully point out that the deponent puts forward no facts to substantiate his bald assertions that the measures taken were necessary for the preservation of peace and the maintenance of order and good government, but merely alleges, in paragraph 11 of his affidavit, his opinion about certain matters. I say that no facts exist which could be put forward to substantiate his assertions.

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AD AFFIDAVIT OF CHIEF ZWIMBA

14. Ad paragraph 4

(a) I deny that there is an overwhelming or majority

acceptance in the Tribal Trust Land of the alleged Ministry and the prevailing state of national affairs, and refer to the affidavits filed herewith;

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(b) I say that the Chiefs are not representative of African opinion in the Tribal Trust Land.

10 AD AFFIDAVIT OF STANLEY ERNEST MORRIS

15. Ad paragraph 4

I refer to paragraph 8(1)(e) hereof.

AD AFFIDAVIT OF NOEL HUGH BOTHA BRUCE

16. Ad paragraph 3

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I respectfully point out that no facts are set out to support the opinions that "Rhodesia is surviving such measures" and that "there is nothing to show that Rhodesia will not continue to survive them", and that no explanation of the meaning of these phrases is given. I refer to the affidavits filed herewith.

AD AFFIDAVIT OF CORNELIUS EWEN MACLEAN GREENFIELD

17. Ad paragraphs 5 and 6

I refer to paragraph 15 hereof.

SWORN at SALISBURY this 31st day of May 1966.

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(Sgd) S. MADZIMBAMUTO

Before me.

(Sgd) L. W. LEWIS

Commissioner of Oaths.

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ANNEXURE "A" TO AFFIDAVIT
OF APPELLANT

Annexure "A"
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RHODESIA MINISTRY OF INFORMATION

"A"

PRESS STATEMENT

115/66/JEM

CHECK AGAINST DELIVERY

EXTENSION OF STATE OF EMERGENCY

The following is the text of the speech 10
by the Minister of Law and Order, Mr.
Desmond Lardner-Burke, in the Legislative
Assembly today (February 2):

"I beg to move the motion which
stands in my name on page 289 of the order
paper.

"On November 5, 1965, as this House
will remember, a proclamation declaring
that a State of Emergency existed from that
date in Rhodesia was published. This 20
proclamation was made in terms of sub-
section (1) of section 3 of The Emergency
Powers Act (Chapter 33), and subsection (2)
of the same section provides that no
such proclamation shall be in force for
more than three months, so that the
existing State of Emergency will expire
at midnight on February 4, 1966. This
subsection also provides that the time
limit is laid down without prejudice 30
to the issue of another proclamation at
or before the end of that period if the
Legislative Assembly by resolution so
determines. The object of this resolution
is to extend the period of the Emergency in
Rhodesia from February 5, 1966, for
a period of another three months.

The House will remember that I made a statement on November 25, giving the full reasons for the declaration of the existing State of Emergency. It was to provide the necessary powers for the security forces to deal with the influx of saboteurs, mainly from Zambia, and also to deal with certain subversive activity which had been occurring in various parts of Rhodesia, and particularly in the Bulawayo area. Since the declaration was made, we have been overtaken by the great march of events, events which have made, and will continue to make, a great impact on history. Rhodesia is now a Sovereign Independent Country, and it behoves us to see that we maintain our territorial integrity and that sovereignty which we have now gained.

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Here I should like to digress for a moment to say that the reason for the declaration of the State of Emergency on November 5 was purely in order to maintain law and order in the country; extraordinary emergency powers were required for this purpose. It had nothing to do with the Assumption of Sovereign Independence which followed a few days later. As a matter of fact, when the Emergency was declared, negotiations regarding independence were still taking place and were reaching a delicate and decisive stage, with subversive elements and all those opposed to the granting of independence to this country making strenuous efforts to undermine our security and to demonstrate that an explosive situation existed in Rhodesia which constituted, it was alleged, a threat to world peace.

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When we assumed our independence subsequently, we used the Emergency Powers in existence to give Government further extraordinary powers which then became necessary; it would have been foolhardy indeed not to do so. Government makes no apologies for facing up to its responsibilities in this regard, but I would ask Honourable Members to compare the peaceful

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transition in Rhodesia with the blood-
shed which has occurred elsewhere in the
world.

I wish to reiterate that the Emergency
was not declared in order to assume our
independence.

I am pleased to be able to tell
the House that at present internal
security is being well maintained, despite
the efforts of many hostile elements
whose object is to cause a breakdown
in law and order in this country and bring
about a paralysis of our moral fibre. 10
I need hardly add that Government fully
appreciates the paramount need to maintain
law and order in this country, and will
take all steps necessary to this end for,
if law and order breaks down, a wonderful
excuse for intervention in our affairs will
be presented to hostile nations and 20
organisations. However, I assure this
Honourable House and the whole country,
indeed the whole world, that this will
not happen.

It follows from what I have said that
the main threat to the security of
this country, and the maintenance of law
and order in it, is an external one;
this is reason enough for continuing the
State of Emergency, but we also need
extraordinary powers, some of which 30
are already being used, to fight the
war on the economic and propaganda fronts;
I shall say more about this later.

Before providing the House with
detailed reasons for the extension of the
Emergency, I would like to review
recent events in the light of certain
remarks I made in my statement to this
House on November 25, when I commented
upon the pattern of the Communist 40
attack on the Western Powers, with
particular reference to undeveloped
territories. I said that we Rhodesians
had seen the strategic position of the

Western Democracies gradually dissipated and that it seemed then an appreciation of the true facts was even now not realised by their politicians who were for the most part prisoners of their past policies.

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10 I also commented on the pressure exercised by Communists, particularly through the cover of vociferous ultra liberal organisations and the fact that this produced muddled thinking amongst the Western Democracies in determining their world wide policies to resist Communist attacks.

20 What we have seen happening during the last three months has confirmed the points I made on November 25, 1965. Rhodesia is now on the receiving end of many threats to her economic and territorial security, some concrete and other quite hysterical. The British Prime Minister has busied himself, since we assumed our independence, with implementing his previous threats of sanctions. The Afro-Asian bloc has been in the forefront of the propaganda war. The hysterical out-pouring from the Afro-Asian capitals have been designed to bring influence to bear on the major powers, both east and west, to use force against Rhodesia. This, of course, ignores
30 entirely the grave results which would inevitably occur if such action were in fact taken.

40 The British Prime Minister is very much alive to these dangers and has spoken repeatedly about them. This, however, has had little effect on irresponsible self-seeking politicians in the countries to the north of us. The clamour still continues with meetings convened all over the place - the latest in Nigeria, that bulwark of democracy in Africa - where they discuss the Rhodesian problem and how to settle it. The emptiness of their military threats is, of course, obvious, but responsible persons and Governments must ensure that the Afro-

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Asian bloc is restrained from initiating any armed attack against Rhodesia in the interest of peace on the African Continent.

It is highly likely that the Communist bloc will do their utmost to encourage such action, so that they can rush to the aid of these African countries when they suffer the certain defeat which would face them if they were so foolhardy as to indulge in a trial of military strength with Rhodesia. This is the great fear which faces Mr. Wilson at the present time. We have no fears, but it is of paramount importance at the present time fully to maintain law and order.

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The propaganda war mounted by the Afro-Asian bloc and Britain is increasing in intensity day by day and we have reached a position which is in fact quite farcical. For example, Ghana and Tanzania, both members of the Commonwealth, who have been providing either training facilities for saboteurs on transit facilities for them on their way to and from Rhodesia, have now severed diplomatic relations with Britain, but at the same time, have no scruples in accepting vast amounts of aid to maintain their tottering economies.

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It is quite fantastic that the British people appear prepared to accept such a premeditated insult to their national pride and, at the same time, continue to find the wherewithal to keep these undemocratic Governments in power in both these countries. The fact that such extraordinary mental acrobatics on the part of the British Government are for the present acceptable to the British electorate can only be ascribed to the great power exercised by the propaganda machine which is directed against Rhodesia.

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Here, I would like to report to Honourable Members on a publication which was recently brought to my notice. It is

called the "Zimbabwe Review" and describes itself as the "official organ of the Zimbabwe African Peoples' Union (Z.A.P.U.) The twelve page review is printed and published by Anglo-Overseas Publishing Company of 30, Monsell Street, Aldgate, London, E.1. For Z.A.P.U., Lusaka, and their U.K. office at 374, Gray's Inn Road, London, W.C.1. The thing that interests me in this kind of all too familiar scurrilous propaganda sheet, volume one, number one, of January, 1966, is that there are nine advertisements. Every one of them extols the pleasures of life in a Communist country or refers to some such country, and I quote extracts from four of these advertisements:

- (i) "Czechoslovakia offers you a very enjoyable holiday during any time of the year."
- (ii) "A new and wider range of tours to the Soviet Union for summer, 1966, intourist."
- (iii) "Come to Bulgaria - the beautiful."
- (iv) "There's more to Yugoslavia than sun, sand and Slivovica - discover Yugoslavia."

Quite apart from the text of the "Zimbabwe Review", I think these advertisements must give a pretty clear indication that Z.A.P.U. is Communist controlled, financed and inspired. It also gives a very good idea of what Britain allows to be printed and published under her very nose. In trying to bring Rhodesia to her knees, Britain can and is helping International Communism and this is made very clear in an article in the review which quotes a speech about Rhodesia made by Mr. Gollan, who is the General Secretary of the Communist Party of Great Britain.

Before leaving the subject of this "Zimbabwe Review", I would like to quote one

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extract from page 12. It reads:

"Number of Restricttees

The number of African restricttees in Rhodesia since U.D.I. on November 11, 1965, is now believed to be well over 25,000 some of whom are held in jails, underground cells in disused mines, police camps and in guarded farms where forced labour on the Nazi pattern is now operating.

Some of the restricttees are loaned to farmers on payment of a fee." 10

There are, in actual fact, 383 restricttees in various camps in the whole country. How ridiculous can these people be and how far away from the truth can they get?

Another farcical situation, if it were not so tragic, has occurred in Nigeria. The Prime Minister of that country called a Commonwealth Prime Ministers' Conference on Rhodesia. The Conference was attended by 20 out of 22 members, and ended on January 12, 1966. 20

It is noteworthy that the more responsible Commonwealth countries did not consider that its importance or value justified representation by their Prime Ministers.

On January 15, 1966, three days later Nigeria was taken over in a bloody coup by the military. This so-called most stable and civilised of all the new independent countries of the Commonwealth went the same way as so many others have done. On top of that, Britain has recognised its military dictator regime with whom she will consult in due course. 30

So, even in Nigeria, western democratic ideals have been dealt a death blow, and to quote the "Sunday Express" of January 16, 1966: 40

"In these circumstances, how can Mr. Wilson persist in his bleak and arid Rhodesia policy? Can he not see why Rhodesia's Europeans will resist to the death rather than hand away political control prematurely?"

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That sums up our attitude fairly accurately. We shall not capitulate.

10 It is very significant that straight after the events in Nigeria, we heard strong rumours last week of a coup in Zambia which was designed to unseat President Kaunda. Rumours of this coup were immediately followed by the resignation of two Zambian Ministers ostensibly involved in a financial scandal involving £118,000, and then the sudden transfer of the Vice-
20 President, Mr. Reuben Kamanga to a post outside Africa. I will leave Hon. Members to draw their own conclusions from these happenings.

It would seem in the view of the British Government that Rhodesians, both Black and White, must be sacrificed on the altar of certain political dogmas in order to stifle the pangs of a conscience which should not exist. Rhodesians both Black and White, must be sacrificed so that personal political reputations in the
30 United Kingdom may be saved.

These politicians, however, cannot, for reasons best known to themselves, realise that in their folly they are laying the seeds for the destruction of society as they and the British people know it today. They are, in fact, doing the Communists' dirty work for them, but they will not succeed.

40 This is the greatest tragedy, however, of the 20th Century, and historians in delivering judgment on present events, will no doubt give these people the ignoble place that they deserve in history.

Turning now to my reasons for asking

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the House to renew the State of Emergency for a further three months, I can say that on the home front there has, over the last three months, been an increase in a type of incident which has been directly incited by scurrilous broadcasts by certain African Nationalists who have been given the facilities of Zambia Radio. These broadcasts, which have been practically a daily feature of our lives since November 20, are direct incitements to violence and to attacks on property in this country, and the agricultural areas particularly have suffered losses through the destruction of crops.

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I cannot minimise the effect these highly subversive broadcasts have had on our African population. There is no doubt that they have worked their evil spell, and a glance at the newspapers from just before Christmas up to the present day will show numerous court cases where accused persons have been convicted of crop-slashing, animal destruction, stoning vehicles, cutting telephone wires, incitement to strike, intimidation, etc. not to mention poisoning cattle and other malicious acts to property belonging, in the main, to European farmers.

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The broadcasts are virulently anti-White, extremely inflammatory, and contain insidious propaganda aimed at subverting the loyalties of African members of the Police, Armed Forces and Civil Service and these broadcasts are permitted by the authorities of a neighbouring Commonwealth country.

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We have protested, of course, but in this mad world nobody seems to take much notice of any such protestations no matter how well-founded they may be. That being so, we have no option but to look after ourselves to the best of our ability, and we must therefore have these continued Emergency Powers to cope with the situation throughout the country.

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In my speech to this Honourable House on November 25, 1965, I mentioned the fact that in the previous twelve months over 80 trained terrorists had been arrested by our Police after their arrival in this country. I also mention that we had evidence to the effect that it was estimated that there were between 700 and 800 trained men or trainees, outside Rhodesia, who were awaiting orders to undertake their subversive activities inside this country. This number still remains approximately the same.

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I also mentioned that although every effort was being made to increase efficiency of our border control measures, it was quite possible that a few clandestine entries are made into the country by people who cross the Zambesi from Zambia, and elsewhere, at night. Our border control is as efficient as it can be, but it is a hard fact that we cannot hope to cover all of our long frontier all the time. Therefore, the terrorists can and still do infiltrate back, and the menace still exists, as detailed by me in November. Accordingly, we have no option but to keep a strict watch on our borders, and to have all the powers available not only there, to stop illegal entry, but also within the country to catch and curb those who have avoided the net.

I must emphasise that sinister forces continue to gather beyond our borders in such countries as Zambia; forces which are endeavouring to extend their insidious and dangerous influences deep into the heart of this country.

40

It is common knowledge that extreme elements of such prescribed organisation as the Zimbabwe African Peoples' Union (Z.A.P.U.) and the Zimbabwe African National Union (Z.A.N.U.) continue to receive terrorist training in Russia, Red China and certain African territories such as Ghana, Algeria and Tanzania. Not only

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are these people taught the art of guerilla warfare but they are also indoctrinated with Communist ideology.

It is, therefore, quite apparent that the build-up of terrorists and offensive material in such territories as Zambia and Tanzania with the implied connivance of the governments of those countries, poses no less a threat now than it did prior to the declaration of the State of Emergency on the 5th November, 1965. Preparations by Rhodesian Nationalists in the aforementioned territories for a campaign of violence against Rhodesia, have already reached an advanced stage.

10

Indicative of Nationalist plans for an armed insurrection in this country has been the recovery, since the 1st November, 1965, from parts of Rhodesia as far apart as Bulawayo, Salisbury and Kezi, of offensive material which includes three Russian hand grenades, one automatic pistol, five sub-machine guns and two hundred and forty-one rounds of assorted ammunition. It is known that Nationalist leaders 'in exile' are giving top priority to the problems associated with acquiring war materials, transporting them to the Rhodesian border area and thereafter introducing them into Rhodesia itself.

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During recent months, the considerable build-up of Rhodesian terrorists in Zambia has continued, the majority being grouped in and around Livingstone and Lusaka, where they await the opportunity to infiltrate into Rhodesia where they can put into practice their terrorist training. Z.A.P.U. leaders in the north now favour the infiltration into Rhodesia of comparatively large groups of terrorists. Reliable information indicates that there are in excess of 500 trained terrorists in Zambia at the present time and there is every reason to believe that this number is

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being progressively augmented as and when trained personnel return to the territory on completion of their various courses of instruction.

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10 Following reports that a 'Mau Mau' type group of would-be terrorists was planning to infiltrate into Rhodesia from Zambia in the vicinity of Chirundu during the Christmas holiday period, security patrols and observations were increased. The vehicle allegedly being used by the group was eventually sighted, abandoned, on the 24th December, 1965, some eleven miles from Chirundu and three days later was observed in Lusaka, which tended to substantiate subsequent information that the group had, under the prevailing circumstances, deemed it expedient to abandon the whole exercise.

20 An example of the powers we need to keep saboteurs under control, and which is provided by our emergency powers, is the power of detention. The only provision for detaining persons under our law is by virtue of the powers conferred on us by the Emergency Powers Act. We would indeed be foolish, and not worthy of our responsibility to maintain law and order, if, because
30 a saboteur could not be brought before the courts for the reasons I have so often given for example intimidation of witnesses, we let him loose on the public to blow up trains, pylons, bridges, etc.

40 We cannot let trained saboteurs run loose in the country, and if they cannot be put out of harm's way by the courts, then they must be put out of circulation by being detained. Where imprisonment and detention is denied to the Government, then we can (and do) fall back on restriction, but this is not entirely suitable for such dangerous people. I will not elaborate on this danger of the trained saboteur any further, but I can assure the House that it is a very, very, real and ever present danger, which must be crushed with every legal power we

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can possibly muster.

In considering the external threat aimed at Rhodesia, cognizance should also be taken of the fact that certain militant African states have recently pledged increased support for Rhodesian Nationalists. Tanzania has offered to train Rhodesian Africans in Guerilla warfare and it is reported that some two hundred Z.A.P.U. members have been moved to Mbeya, preparatory to undergoing such training and instruction. There is also reliable information available indicating that the Algerian Government has stepped up its facilities for the para-military training of Rhodesian Nationalists.

10

Although at this stage, the creation of an effective O.A.U. military force for the invasion of Rhodesia cannot be viewed as a feasible eventuality, we must take notice of the fact that the O.A.U., through the agency of its African Liberation Committee (A.L.C.) has intensified its efforts to provide both Z.A.P.U. and Z.A.N.U. with increased moral, financial and para-military assistance and there are strong indications that it will extend the scope of training facilities already on offer to what are called 'Freedom Fighters' from Rhodesia.

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It must also be acknowledged that as time passes and Rhodesia has not been brought to her knees in the economic and political sense, the Afro-Asian voice at the United Nations will become increasingly shrill in its demands for penal mandatory sanctions and military action against this country.

Britain's present military involvement in the Rhodesian situation is currently restricted to the posting to Zambia of a squadron of jet fighters, some transport aircraft together with R.A.F. support personnel, and the deployment, ostensibly for protection purposes, of a Company of

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British troops at the B.B.C. radio transmitter near Francistown. Already there is a suggestion of a drastic increase in the size and character of British military detachments in Zambia, and whether or not the initial excuse for their presence in that country is for the purpose of safeguarding the Kariba hydro-electric scheme, we must have regard to the threat posed.

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Britain, with troops in Zambia, would like to see a complete breakdown in the maintenance of law and order in Rhodesia. To avoid such a position developing, and thereby providing Britain with an excuse for introducing troops into Rhodesia for the purpose of restoring peace, the emergency powers should not be withdrawn at this stage.

20

Internally, and quite apart from the continuing menace posed by Zambia Radio broadcasts, saboteurs, Communists, etc., Rhodesia, during the last three months, though outwardly calm, has had its share of security troubles. However, many people, residents and visitors, have been amazed at how calm the country has been since the 11th November last. In view of what happened then, and the numbers of our enemies (external and internal) I think we have done an extremely creditable job in maintaining law and order during the period under review. We must continue our vigilance, however, especially as far as the external threats are concerned.

30

For a moment, I wish to digress into the very important economic and financial field and relate these subjects to the extension of the current emergency. With regard to the Ministry of Commerce and Industry, it is considered essential to extend the present emergency for a further period of three months. To take but one instance in this particular Ministry, whilst the Control of Goods Act adequately covers the control of imports and exports, it has certain limitations in respect of the distribution, disposal, purchase and sale of commodities and animals in Rhodesia.

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It was for this reason, amongst others, that, for instance, the Emergency Powers (Control of Goods and Services) Regulations, 1965, were introduced under the Emergency Powers Act. It is essential that Government should have some tool to counter effectively the economic and financial sanctions imposed on Rhodesia, in particular, the iniquitous Orders in Council passed by the British Parliament.

10

The Minister of Finance also has a very great interest in seeing that the period of emergency is extended for a further three months. To take one small example, that Ministry introduced the Emergency Powers (Investment of Blocked Funds) Regulations, 1965, on the 7th December, 1965. The regulations were introduced as an emergency measure to provide for the employment of funds blocked, in terms of the Exchange Control regulations, in a scheme to alleviate the financial embarrassment and hardship suffered by those Rhodesian residents who have income accruing to them in other countries which cannot be transferred to Rhodesia on account of restrictions imposed by those countries on financial transactions with Rhodesia. The need for this scheme will continue until the restrictions are lifted.

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This given a very short resume of only one aspect, in each of two vital Ministries, why the emergency powers should be extended. These powers are also needed by other Ministries as well, but I will not dwell on the many and varied extraordinary powers needed by them. In the present circumstances in which we find ourselves, I can assure the House that they are all vitally necessary.

40

Since the assumption of our democratic rights, the attitude of the United Kingdom Government appears to have changed, as I

have already indicated, to the extent that it now seems their intention and desire to bring about a breakdown of law and order in this country. This is a serious statement to make, but I can substantiate it.

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10 In the first place I refer again to
the broadcasts from the Zambian Broad-
casting Corporation. It must be assumed
that these take place with the connivance
of the United Kingdom Government, firstly
by virtue of the fact that the B.B.C. has
been using that radio for broadcasts of
its ordinary news services and for other
information it is endeavouring to get
across, and secondly, because the United
Kingdom Government knows about the subversive
and shocking broadcasts that are being relayed
20 from that station, as the matter has been
raised in the House of Commons, and yet
they have apparently done nothing about it.
We might also well ask what the real purpose
of the new transmitter erected by the B.B.C.
near Francistown is, if it is not for
subversion.

30 Then there is the oil embargo, deliberately
brought about by the United Kingdom Government,
which they hope would have the effect,
inter alia, of curtailing the activities
of our Police and Army, so that if law and
order was to break down, (may I say a vain
hope), there would be great difficulty in
restoring it again because of the lack of
means of transport.

40 Talking of oil, it is a strange world
in which we live. One in which Mr. Wilson
and President Johnson have placed an oil
embargo on Rhodesia, a peaceful Commonwealth
country. At the very same time, as
pointed out by an American Senator, Mr.
Wilson is allowing British ships to supply
oil to North Vietnam where it is being
used to further a Communist war against
American troops. A fantastic situation.

We now read in the newspapers that

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the Queen has commuted to life imprisonment certain death sentences imposed by Rhodesian Courts. I mention in this regard the case of an African named Lazarus, convicted and sentenced for attempting to set fire to two buildings. The death sentence was passed before the 11th November, 1965. Now I do not wish to deal with this case at the present time, for obvious reasons, but it would be interesting to know on what information the Queen acted. It was the invariable practice, under our 1961 Constitution, for the Royal Prerogative of mercy to be exercised by the Governor, not by the Queen, on information supplied by the Government and contained in any petitions presented to him.

10

In exercising his discretion, and this is most important, the Governor did not rely solely upon the record of the trial in Court; he had the advantage of a report from the Presiding Judge and also reports from various officials and these gave the fullest possible information about the case and the accused, including the full picture of his character and history.

20

The position is exactly the same in the United Kingdom where the prerogative is exercised by the Home Secretary. When a man's life is at stake, it is only right and just that all such information be considered. It might be said in the present case that the Queen has saved this man's life. I do not propose to say anything about that, again for obvious reasons, but ask Honourable Members to consider a case where the Queen, acting without the fullest information, declines to exercise the prerogative of mercy.

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40

According to the Press reports, the death sentence in the present case has been commuted to a sentence of life imprisonment. It might well be that the person exercising the

prerogative of mercy, when in possession of all the information, which the United Kingdom could not have, might consider that this is too severe a sentence and might, for example, commute it to a shorter term of imprisonment. It really grieves me to see how the Queen is being brought into disrepute by the Government of the United Kingdom.

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10 In another case, that of Runyawo, it was also reported that the Queen had commuted a death sentence to life imprisonment. In this instance, the record of the case was already in Britain because it was the subject of an appeal to the Privy Council. The appeal was dismissed by the Privy Council, but, here again, I will say no more, as the matter has still got to be considered by the Officer Administering
20 the Government.

 Nobody has yet been hanged under the Mandatory Death Penalty clause. On the contrary, one has already had his sentence commuted to life imprisonment. I refer to the well known case of Mapolisa. The reason why nobody has been hanged is because there have been various points of law before the Privy Council, and therefore, any such
30 action must be delayed until all appeals have been heard and the legal situation clarified.

 However, there is another aspect of this matter which concerns me just as much because of my responsibility for maintaining law and order in this country. Bearing in mind that there is no death penalty in the United Kingdom, except for treason, what deterrent will there be as far as saboteurs, for instance, are
40 concerned in this country. It must be obvious to all that the United Kingdom Government will go to any lengths to bring about the downfall of the lawful Government of this country, including apparently interference with the sentences of our Courts and also in our internal security.

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I say again, therefore, that it is the obvious intention of the United Kingdom Government to cause a breakdown in the maintenance of law and order in this country. Indeed, I go further and say that if law and order does break down, then the use of force would follow.

Although the technocrat Wilson says he does not wish to use force - he would prefer sanctions to work against us - I regret it is now becoming obvious that Mr. Wilson's actions, if continued, will culminate in the use of force. If sanctions fail he will try something else, and we all know what the majority of those countries represented at the United Nations, what the majority of the Commonwealth countries and what the Organisation of African Unity will urge ...

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In his statement to the House of Commons dealing with the future of Rhodesia on the 25th January, 1966, Mr. Wilson stated, inter alia:

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"The first responsibility of this interim Government, as of any Government, will be the maintenance of law and order. This will require not only the normal precautions against domestic disturbance and illegality, but also, in the special circumstances of Rhodesia, guarantees to prevent a repetition of the rebellion and to protect human rights. The British Parliament will need to be assured about the adequacy and effectiveness of these guarantees."

30

He went on to say:

"Problems of political rehabilitation will also have to be tackled. Persons restricted or detained for purely political reasons will have to be released provided that they give guarantees that their political activities will be conducted constitutionally. The aim is to create conditions in which, while law and order

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is maintained, political activities may be conducted in security and freedom from intimidation from any quarter".

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10 The Government of this country has always maintained law and order in Rhodesia and will continue to do so without help or advice from Mr. Wilson and I think I can go so far as to say, in spite of him, especially in view of the kind of nonsense in the speech I have just quoted.

I think I have said enough on this matter to show why we must continue with the State of Emergency.

20 Now I should like to mention certain desertions from the police. An interesting point about this is they were ex-Metropolitan or other United Kingdom policemen. This came about because we were endeavouring to get more recruits and, as a result, we increased the age limit for those wishing to join the police here and we even agreed to married men joining the force. After two weeks in our training camp, three of those deserted, and afterwards stated that they did not approve of the training they received.

30 Here, I would like to mention to the House that adverse reports were received from the instructors during this period. Since returning to England they have been re-employed in the police, which makes one wonder whether they were not, in fact, sent out by the British Government for some specific purpose.

40 Another point that I should bring to the notice of the House is the fact that when the High Court ruled that the Preventive Detention Act was no longer valid, by virtue of the fact that it was for a specific period and could not be re-enacted because of the Constitution, we worked out certain amendments to the Constitution to enable

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preventive detention to be brought in. These provided that there would be certain control in the form of a Tribunal to consider each case, which is a condition that the House has always requested.

This was submitted to the British Government, but when I spoke to Mr. Bottomley and his advisers, I was informed, in no uncertain manner, that they had no intention whatsoever of advising the Queen to accept the necessary petition in terms of the entrenched clauses of the 1961 Constitution. 10

They considered that this was a thing that should go to the referenda procedure. It was obvious, here again, in the light of what I have said before, that they wished law and order in the country to break down and, therefore, they were not prepared to help us in any way by amending the Constitution to enable us to bring in the necessary controls to maintain law and order. 20

I accused Mr. Bottomley and his advisers of interfering in our internal security by refusing to do this, but they naturally stated that they were not doing this. It was obvious, however, and in view of what has happened lately, there is no doubt that the whole of the British Government's policy is to bring about a breakdown of law and order in this country. I believe they are most surprised that law and order in this country has been so well maintained since the 11th November, and this has upset all their calculations. 30

Their intention, I say again, is to break down the maintenance of law and order in this country, and the fact that this would bring about the murders of Europeans and Africans appears to concern them little, and bears out all that I have said about the attitude of the Labour regime. 40

Can any loyal Rhodesian doubt that it is absolutely essential for the State of Emergency to be continued?

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10 It has also come to my notice that certain misguided individuals in this country, some in high places, some who have held political rank or have represented the Government in various capacities, have formed what has been colloquially referred to as a 'Shadow Cabinet'. These individuals have met and discussed various matters, and it appears from the information I have received that they are trying to form themselves into a Government so that they can take over, if requested by Sir Humphrey Gibbs or Mr. Wilson.

20 These people have to be warned, and I now give them full warning, that if they continue with these nefarious works, if they continue with their endeavours to overthrow our Government here, we will have no hesitation in dealing with them in exactly the same way as we have dealt with anybody else who has endeavoured to cause bloodshed in this country. I want to warn them very, very seriously that they had better consider their actions in the future, because the Government will have no compunction in dealing with them, as we have no intention of allowing them to upset the present lawful Government of this country and the independence we have acquired.

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40 The House is also fully aware that a recent Court action was brought by the 'Central African Examiner' to embarrass this Government. I am now in a position to state, categorically, that the Editor, Mrs. Eileen Haddon who was one of the persons concerned in bringing this action, was in consultation with certain parties closely connected with the British Government. We know that she wrote to Mr. Ben Whitaker, asking him to contact a Government authority in the United Kingdom for further instructions regarding the case, in the event of an adverse judgment.

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This is yet another instance of the methods used by the British Government in their endeavours to prejudice our present constitutional stability.

I have also noted that Canon Collins, another prominent member of the Christian Action Group, which has a branch in Rhodesia, has said that force must be used against us if sanctions fail.

This is another reason why the State of Emergency should be continued; so that we can control this 'Fifth Column' type of individual in this country. These Quislings!!

10

I think the House will agree with the Government that all the threats to our security, outlined above, are of such a nature, and are lined up against us on such an extensive scale as to be likely:-

- (a) To endanger the public safety
- (b) To disturb or interfere with public order; or
- (c) To interfere with the maintenance of any essential services in Rhodesia

20

Finally, I would like to pay a very special tribute to the men who have borne the heat and burden of maintaining law and order in Rhodesia during these difficult times; and how well they have done it! I refer, of course, to all ranks of our magnificent police force, who have done a really sterling job. I have no doubt that all Honourable Members will join with me in expressing thanks of this House, and of Rhodesia as a whole, to the British South Africa Police. These thanks must also be extended to the Army, Air Force, and all Civil Servants. The country is deeply indebted to all these people for the way in which they have carried out their duties in recent months.

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123.

The Government considers it to be absolutely essential to have these extensive emergency powers for at least another three months, because of the external and internal threats to our security and economy which I have mentioned. I am sure that all Hon. Members will agree with me that we need these powers at the present time, and I am confident that this House will support the Government by passing the resolution which stands in my name.

10

I beg to move

Ministry of Information,
P.O. Box 8232,
Causeway.

Telephone No: 60311

February 2, 1966
JEM/SW

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No.37

Annexure "A"
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In the General
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Case No.GD.247/66

No.38

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Affidavit of
Kenneth John
Fraser
Skelton
Dated
27th May
1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First Respondent
in his capacity as Minister of
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second Respondent
in his capacity as Superintend-
ent of the Gwelo Prison

10

AFFIDAVIT

I, the undersigned,

KENNETH JOHN FRASER SKELTON,

do hereby make oath and say:

1. That I am a Bishop of the Church of
the Province of Central Africa, a
part of the Anglican Christian
Communion, resident in Bulawayo,
and have held office as Bishop of the
Diocese of Matabeloland since 1962

20

2. That within and throughout the
Diocese and Province of Matabelo-
land there are a large number of
Anglican Christian congregations,
parishes, missions, schools, and
churches both in the urban areas
and in the rural and Tribal Trust
areas.

30

3. That the Anglican Christian Community
in the Diocese consists of both
Europeans and African priests, teachers
and mission workers and that by virtue

of my office I am in close and constant touch with these people as well as with individual members of the Anglican Christian Community in Matabeleland who are Africans.

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Kenneth John
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Skelton
Dated
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(Contd.)

- 10 4. That I have been shown an extract from an Affidavit by Chief Zwimba filed on behalf of the respondents herein in which he expresses the view that there is an overwhelming acceptance by Africans in the Tribal Trust land of the present Government and the present state of national affairs.
- 20 5. That from my own knowledge and from many reports made to me since the 11th November, 1965 by African Anglican priests, mission workers and teachers throughout the Diocese as well as from conversations which I have had personally with individual African members of the Church, coming from the urban and rural and Tribal Trust areas of the Diocese, I can state that I have not heard of or spoken to any Africans other than a few chiefs and headmen who have expressed support of the present regime, the Unilateral Declaration of Independence, or the 1965 Constitution.
- 30 On the contrary all those with whom I have spoken, and all reports made to me by the African and European clerical and lay staff of the Anglican Community in Matabeleland, indicate that Africans throughout the Diocese deplore those events, are in fear of the consequences of them, and regard the present regime as inimical to what they consider to be their legitimate political interests and aspirations, and to their orderly progress towards greater and fairer participation in Government by Africans. They regard the breaking of Constitutional ties with Great Britain as a tragedy and a loss of protection, and are in fear of the
- 40

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Affidavit of
Kenneth John
Fraser
Skelton

Dated
27th May
1966
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tremendous and authoritarian powers exercised and exercisable by the present regime which they believe are being and will be used to impede, hinder and prevent Africans from making political progress or their participating effectively in the Government of the country.

6. That the Anglican Church in Rhodesia is a member of the Christian Council of Rhodesia, a body on which all major Christian denominations in the country are represented, save for Roman Catholics whose representatives attend as observers, and that I am the President of the said Christian Council of Rhodesia; in November, 1965 after the Unilateral Declaration of Independence this Council at a fully representative meeting, passed with one dissentiant vote only and for circulation amongst member Churches the resolution set forth in Annexure "A" hereto. 10 20
7. That I am also a member of the executive committee of the Bulawayo Council of Churches which represents Christian Churches in Bulawayo of all major denominations, and that on the 17th December, 1965 a statement was issued to member Churches of the Bulawayo Council of Churches approved by the Council by 31 votes to 4 with 2 abstentions. A copy of this statement is attached and marked Annexure "B". 30
8. That the majority of member Churches of the Christian Council of Rhodesia are Churches whose followers are mostly Africans, and there are African representatives on the said Christian Council of Rhodesia and European representatives. The Executive Committee of the Bulawayo Council of Churches also contains and represents African members, and it is 40

my respectful view that the impression which I have gained as to the reaction of Africans to the events earlier set out is confirmed and fortified by the statements contained in Annexure "A" and "B" hereto.

In the General Division

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Affidavit of Kenneth John Fraser Skelton

Dated 27th May 1966

(Contd.)

SWORN at BULAWAYO on this the 27th day of May 1966

10

K.J.F. SKELTON.

BEFORE ME,

C.B. LONG

Commissioner of Oaths.

NO. 39

ANNEXURE "A" THERETO: RESOLUTION OF CHRISTIAN COUNCIL OF RHODESIA

CHRISTIAN COUNCIL OF RHODESIA

No.39

Annexure "A" thereto: Resolution of Christian Council of Rhodesia

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1. We, the representatives of the Churches and Christian organisations which form the Christian Council of Rhodesia, accept for ourselves, and submit to them and as far as may be to all the Churches of Rhodesia, the following propositions for their deliberation and action, and to the World Council of Churches and its constituent members.

30

2. In humble submission to the sovereignty of Almighty God and the judgment of our Lord Jesus Christ, we affirm our present loyalty to Her Majesty the Queen within the Constitution which is at present the Constitution accepted by the lawful Parliament of Rhodesia 1961.

We affirm our present loyalty to

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Annexure "A"
thereto:
Resolution of
Christian Council of
Rhodesia
(Contd.)

His Excellency the Governor of Rhodesia as the Queen's lawful governor according to the Constitution.

3. We repudiate misuse of the Queen's name in Constitutional matters, the Queen having the clear duty as a constitutional monarch to reject any advice, whether from her Prime Minister in Britain or from her Prime Minister in Rhodesia, which is contrary to the Constitution itself, affirmed by the British and Rhodesian Parliament. 10

We judge the proclamation of a new Constitution of Rhodesia by a group of Ministers, without the assent of the Parliament or the Crown, to be an unlawful act, and any further enactments of Parliament to be unlawful unless confirmed by the lawful Governor. 20

4. We regret the great blow delivered by this act to the concept of constitutional law brought to Africa by a Western civilisation nurtured in Christianity.

We note the repeated statements made by Mr. I.D. Smith before November 11th, 1965 of his reluctance to take unconstitutional action and the assurance of the British Prime Minister since that his Government's aim is "to turn Rhodesia back as speedily as possible into constitutional channels." 30

We pray that the leaders and peoples of Britain and Rhodesia will make this their constant aim, and record our admiration for His Excellency the Governor as he remains at his post to protect and further it. The Churches and their leaders should be ready to assist in this work of reapproachment 40

and reconciliation. But we believe it to be the duty of all who consider the act of November 11th, 1965 to be not only unconstitutional but wrong (as we do) by every traditional standard of Christian judgment on the legitimate right of revolution against constitutional authority, to make their allegiance to the Governor clear by letter or other action, according to their opportunities and so assist him in his judgment and advice to the Crown concerning the state of public opinion and the moment for beneficial and reconciling action.

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Annexure "A"
thereto:
Resolution of
Christian
Council of
Rhodesia
(Contd.)

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5. We believe that it is a betrayal of principle if those who condemn this act as wrong now remain silent, on the grounds that "the decision has been made". On the contrary, we believe that Church and Press and Government and every public agency should further the expression and test of the full state of opinion of our African and European population.

30

We note that intimidation of both black and white is increasing in many insidious ways. As a result, more people than ever are now afraid to exercise their right of freedom of speech.

40

We are deeply concerned that information is frequently suppressed. A particularly serious instance of this is the means by which people are taken away from their homes, while it is an offence for friends or relatives to make known their whereabouts.

6. We look forward earnestly to, and pledge ourselves to work for, the rapid restoration of Constitutional Government, in our land.

In the General
Division

—
No.39

Annexure "A"
thereto:
Resolution of
Christian
Council of
Rhodesia
(Contd.)

7. We recognise that there are Christians who differ from us. For them and for ourselves we affirm liberty of judgment and action according to conscience. We call upon all in our churches to respect each other's sincerity and liberty to differ, and to maintain the bond of mutual acceptance and charity. Each man is answerable to God in his own conscience. 10
- We affirm the right and duty of Christians to witness publicly and privately in this situation to the truth as they believe it to be, clearly, wisely, charitably, and according to their opportunities.
8. But witness alone is not enough. 20
- The present situation has been the culmination not principally of constitutional or political dispute, but of racial division and lack of good faith. If this continues the graver and deeper will be the wounds in the body of mankind, and in Christ's body the Church, here in Rhodesia and far beyond.
- We believe that the Church, ministers and laymen together, should turn at once to its own renewal at the fount of the healing of Christ, and be untiring in its own forgiving, reconciling, and healing work in His name. 30
9. We call men in Rhodesia and beyond its borders to abstain from violence and bloodshed, and we call our own people to pursue their daily duty peacefully and share fully whatever privations and difficulties may come to us. 40
10. Christ has given the Church in Rhodesia this particular calling

and opportunity, and we pray that we may not be unworthy of our calling. We summon our own people to constant prayer, and ask the constant prayer of our fellow Christians throughout the world.

In the General
Division

No.39

Annexure "A"
thereto:
Resolution of
Christian
Council of
Rhodesia
(Contd.)

NO. 40

ANNEXURE "B" THERETO:
RESOLUTION OF BULAWAYO
COUNCIL OF CHURCHES.

No.40

Annexure "B"
thereto:
Resolution of
Bulawayo
Council of
Churches

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STATEMENT issued to Member Churches by the BULAWAYO COUNCIL of CHURCHES on December 17th, 1965, and approved by Council by 31 votes to 4, with 2 abstentions.

20

The BULAWAYO COUNCIL of CHURCHES deploras the seizure of power by a unilateral declaration of independence on November 11th 1965, and the claim that this would preserve Christianity and Western civilisation. Responsibility for the present situation must be shared by many both in Rhodesia and Britain. During 42 years of self-government we have failed to establish just relations between the peoples and to prepare sufficiently for peaceful change. Recently restriction and detention without trial, the extension of police powers, the suppression of free opinion, and the use of propoganda, have increased mistrust and antagonism between the races, and have emphasized this failure.

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It appears that the purpose of the declaration was to preserve the rule of the white minority and the effect can only be to widen the gulf between the

In the General
Division

No.40

Annexure "B"
thereto:
Resolution of
Bulawayo
Council of
Churches
(Contd.)

racess. The new constitution offers no guarantee of a government in which all the peoples of the country can co-operate, and will inevitably result in a deterioration of the political status of the Africans.

The present situation presents a challenge to all Rhodesians, and particularly to Christians, to accept personal responsibility to think out the terms of and work towards a just society that will entitle Rhodesia to take its place as an independent nation among the nations of the world.

10

We hope for the emergence of a form of society based on the rule of law and the worth and freedom of the human person, and a constitution generally acceptable to all sections of the people. In our view the alternative to a unilateral declaration of independence was not immediate majority rule, but a programmed transition to responsible government shared by all races.

20

We call on all Christians:

- (a) to refrain from acts of violence and provocation.
- (b) to refrain from seeking scapegoats such as African Nationalists, the British, Colonialism, Communism, the United Nations ----- but rather to recognize personal failure and to seek reconciliation by word and deed.
- (c) to seek to bring about equality of opportunity for all.
- (d) to work out individually and in groups the terms of a just society.
- (e) to seek personal friendship and promote common action: Black and White, White with Black.

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(f) never to accept wrong because it may appear to triumph, but rather to keep faith with righteousness and work for its fulfilment.

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Division

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10 We believe that there is still hope for an honourable and peaceful solution to the claim of Rhodesia for independence on terms acceptable to Rhodesia, to Britain, and the world, and that it is the duty of Christians to do everything in their power to bring about a climate of opinion in which negotiations can be resumed.

Annexure "B"
thereto:
Resolution of
Bulawayo
Council of
Churches
(Contd.)

20 We believe it to be an essential step towards a solution that no one should continue to be deprived of his liberty except by due process of law, and that political detention should cease. All peoples should be freely represented in the measures taken to resolve our common problems.

In the General
Division

NO. 41

No.41

AFFIDAVIT OF FREDERICK
WILLIAM MAXWELL LEE

Affidavit of
Frederick
William Maxwell
Lee
Dated
31st May
1966

Case No.GD.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between :

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superin- Respondent
tendent of the Gwelo Prison

AFFIDAVIT OF FREDERICK WILLIAM MAXWELL LEE

I, FREDERICK WILLIAM MAXWELL LEE, hereby
make oath and say that:-

1. I am a priest of the Anglican Church and a member of the Salisbury Council of Churches, on which are represented all the major African and European Christian congregations of Salisbury, other than Roman Catholic congregations. 20
2. At a general meeting of the said Council held on 18th November, 1965 attended by the Chairman (the Anglican Bishop of Mashonaland) and 23 representatives, including myself, the Council passed the following resolution: "The Salisbury Council of Churches 30

supports previous statements by the Executive of the Christian Council of Rhodesia condemning the possibility of a U.D.I. Now that it has taken place, this Council declares its loyalty to the Queen through Sir Humphrey Gibbs the only legal Governor. This Council does not recognise the present regime as the legal authority in Rhodesia". No representatives voted against the said resolution.

10

3. At a general meeting of the Council held on 17th February, 1966 attended by the Chairman and 40 representatives, including myself, a motion to rescind the said resolution passed on 18th November, 1965, was defeated by a substantial majority.

20

SWORN at SALISBURY this 31st day of May 1966.

(Sgd.) F.W.M. Lee

BEFORE ME,

(Sgd.) L.W. Lewis
.....

Commissioner of Oaths.

In the General Division

No.41

Affidavit of Frederick William Maxwell Lee

Dated 31st May 1966 (Contd.)

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In the General
Division

NO. 42

No.42

AFFIDAVIT OF PATRICK DAVID
BERTHOUD

Case No.G.D.247/66

Affidavit of
Patrick
David Berthoud
Dated
27th May
1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First Respondent 10
in his capacity as Minister of
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second Respondent
in his capacity as Superintendent
of the Gwelo Prison

AFFIDAVIT OF PATRICK DAVID BERTHOUD

I, PATRICK DAVID BERTHOUD, do hereby
make oath and say:

1. I am the Editor of the Catholic Magazine "The Shield" published monthly in Salisbury and I reside at 3, Gladstone Road, Braeside, Salisbury. "The Shield" circulates amongst Catholics throughout Rhodesia. 20

2. On or about the 28th November, 1965 in my capacity as Editor of "The Shield" I received a true copy of the attached Pastoral Instruction "A Plea for Peace" from the Vicar General of the Salisbury Archdiocese, the Reverend Fr. Geogheghan S.J. for the purpose of publishing its contents in "The Shield". 30

3. The contents were duly published in "The Shield" and a cyclostyled version of the Instruction was issued at the doors of many churches in Salisbury, and I believe, in other places.

In the General Division

No.42

Affidavit of
Patrick
David Berthoud
Dated
27th May
1966
(Contd.)

4. I verily believe that the attached Instruction was issued as the authoritative teaching of the Catholic Hierarchy in Rhodesia, and that it has been acknowledged as such by Catholics in Rhodesia, and that the vast majority of Catholics accept the teachings therein set out.

10

SWORN at SALISBURY this 27th day of May 1966.

(Sgd) P.D. BERTHOUD

BEFORE ME,

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(Sgd.) L.W. LEWIS
.....

Commissioner of Oaths.

In the General
Division

NO. 43

No.43

ANNEXURE THERETO: PASTORAL
INSTRUCTIONS

Annexure thereto:
Pastoral
Instructions

SPECIAL SUPPLEMENT TO "SHIELD," DECEMBER,
1965.

This is a copy of

"A PLEA FOR PEACE"

The Pastoral Instruction of the Catholic
Bishops of Rhodesia, issued to the people,
on the 28th November.

10

The daily increasing requests made
to us your bishops for pastoral direction
in these confused times urge us to address
this Instruction to you, members of the
Church in Rhodesia.

What we have to say to you is of
a pastoral nature and must not be construed
otherwise. We have no intention of
intruding into the field of party politics.
This we already made clear long ago
in our Joint Pastoral, "Peace through
Justice," when we said: "Legitimacy
of power is not bound up by Providence
with any one form of government or
with any political party. Catholics,
like other citizens, have full
liberty to prefer one form of
government to another or one
political party to another, provided
these are not contrary to the rule of
right reason or to the maxims of
Christian teaching." This should be
abundantly clear to all.

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Since we returned from Rome we
have made exhaustive enquiries
regarding the reaction of our people to
recent events in this country. From
our investigations it is clear
to us that they are so terribly
perplexed and confused as a result
of the state in which Rhodesia finds

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Division

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No.43

Annexure thereto:
Pastoral
Instructions
(Contd.)

10 itself today that only a courageous re-assessment of the whole situation by all parties involved can provide a peaceful and permanent solution to our present problems. We cannot go on as things are, with two different authorities claiming to be the lawful government, with people divided in their loyalties, and with danger of the present uneasy situation having the most appalling repercussions, not only here and in other parts of Africa, but throughout the entire world.

We appeal, therefore, to all those immediately concerned to come together as quickly as possible in a spirit of charity, devoid of recrimination, and to try to resolve their differences with realism, understanding and unselfishness before it is too late.

20 However difficult the prospect of success in such an effort, we ourselves are convinced that it is still possible to achieve it, and that by united and genuine determination to build up a truly Christian order of society in this country, the inestimable gift of peace will be possible for all of us as well as the prosperity which flows from it.

30 To let things drift is dangerous. Passions have been aroused, personal political preferences are so keenly felt, past grievances are so vivid and the future so obscure that, humanly speaking, it is impossible otherwise to reconcile the conflicting views held in Rhodesia today.

40 In the meantime, to prevent the further growth of bitterness and to prepare the way for understanding, we must presume good faith even in those with whom we profoundly disagree, and while we may attempt to form their consciences to what we believe to be right, we must nevertheless respect the freedom of the individual conscience and look on it as sacrosanct. It

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Annexure thereto:
Pastoral
Instructions
(Contd.)

may perhaps be more profitable for each of us to look fearlessly into our own hearts and try to find out if we who profess the law of Christ - which is the law of love of God and of neighbour - really try to observe it in our own lives.

Another thing which is quite clear to us is this: Vast numbers of the people of Rhodesia are bitterly opposed to the unilateral declaration of independence made recently. They are particularly angered that it should be stated publicly that this action was taken in the name of preserving Christian civilisation in this country. It is simply quite untrue to say that they have consented by their silence. Their silence is the silence of fear, of disappointment, of hopelessness. It is a dangerous silence; dangerous for the Church, for all of us. It comes as no surprise, therefore, that many are saying, "So this is Christian civilisation! This is what Christianity is! The preservation of privilege for the few and well-to-do and the neglect of the many who have nothing!" They also say, "It seems as if we have been deceived by the exponents of Christianity, the missionaries. These have come here only to prepare the way for the racist State where we shall remain permanently the hewers of wood and drawers of water, and where a favoured handful can control and delay our development indefinitely. Can our bishops do nothing except tell us to be meek and patient? How long must this go on?" This is a frightening problem which faces us today, a problem which need never have arisen had Rhodesians of all races had the good sense to trust to constitutional means for the achieving of their ends, inspired by Christian courage and a Christian sense of justice.

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The function of the Church is not political; rather it is so to influence

men's minds by the teaching of Our Divine Lord that they shall learn to live together peacefully as members of the one human family bound together in the solidarity of creation and redemption. The conscious acknowledgment of such brotherhood enables us to say with real meaning, "Our Father," and alone will enable us to face the future together with confidence and with clear conscience.

10

The function of the State, as the administrative arm of the nation, is to serve all the people, without favouring one group more than another, working to achieve that complex of conditions in which all men, irrespective of race, religion or political affiliation, can live as fully accepted members of society, having equal opportunity of access to all those things which promote their full development.

20

As we have already clearly stated in "Peace through Justice," "An immoral state of affairs exists when nationalism or race or economics or any other similar thing becomes the dominant norm of behaviour and is placed above man, considered as an individual or as a group." There is no place in Christianity, properly understood, for such a situation, and the political theory which professes to uphold Christian and western civilisation by upholding exclusiveness and the privilege of the few makes a hideous mockery of those words. More than that, when such iniquitous policies are preached and put into practice they are uniquely calculated to turn a whole people away from Christianity and to throw them, in their disillusionment with the Christian faith, into the danger of godlessness itself.

30

We have pointed out to you before the command of Our Divine Lord to imitate His own example of love, yet few have had the faith and the courage to face up to the challenge. Here let us say it again: According to our Christian faith, all

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Division

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Annexure thereto:
Pastoral
Instructions
(Contd.)

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Annexure thereto:
Pastoral
Instructions
(Contd.)

principles of division, all national and cultural particularities, all social, political and religious differentiations are meant to be subordinated to the over-all unity achieved by Christ. "You are all children of God by faith in Christ Jesus There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female. For you are all one in Christ Jesus" (Gal. 5, 36). Whosoever, therefore deliberately despises this disposition of God for His human creatures is guilty of a grave act of dishonour to the Almighty and must be considered to sin grievously.

10

It is on such startling truths of the Christian faith that western civilisation was built up and its idea of law established. It is only by the personal and practical recognition of the dignity of the individual, no matter what his origins or degree of social development, that civilisation as we know it can truly be defended. Without such recognition society degenerates into the blind brutality of mob law or the secret savagery of the police State, where no one can trust his neighbour, where men are reduced to fearful silence or speak only in riddles, where freedom of expression is shackled, the privacy of communication destroyed, and doubt and suspicion creep into the very family circle itself.

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Western civilisation, moreover, has rightly insisted on the need for a juridical constitution as an effective instrument for the preservation of the principles on which it is founded. In this century the awful tragedy of wars has convulsed the world in anguish, because of the neglect or disregard of such an instrument. As long ago as 1942 the late Pope Pius XII spoke words that are relevant even here today

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when he said:

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Division

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No. 43

Annexure thereto:
Pastoral
Instructions
(Contd.)

10 "The modern idea of justice is often
corrupted by a positivist and utilitarian
theory and practice, subservient to
the interests of particular groups,
sections, movements; the course of
legislation and the administration of
justice being dictated by their policies.
This state of affairs can be remedied
only by awakening the human conscience
to the need of a juridical constitution
based upon God's sovereign Lordship
and immune from human caprice;
a constitution which will use its
coercive authority to protect the
10 inviolable rights of man against the
aggression of any human power"

"This supposes -

- 20 (a) a tribunal and a judge taking
their direction from law clearly
defined;
- (b) clear legal principles which
cannot be upset by unwarranted
appeals to a supposed popular
sentiment or by merely utilitarian
considerations;
- 30 (c) the recognition of the principle
that the State also, and the
officials and organisations
dependent upon the State, are
under the obligation of revising
and withdrawing such measures
as are incompatible with the
liberty, the honour, the advance-
ment or the welfare of individuals."

(Christmas Message).

40 Every word of this injunction of the
Holy Father is worthy of consideration.
It indicates quite clearly that a juridical
constitution is of such moment for the well-
being of a nation; that not only must it be
acceptable to those who are governed, but it

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Annexure thereto:
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(Contd.)

has such quality of permanence about it that it cannot lightly be set aside in order to make way for another.

Another thing on which civilisation as we know it is based is the oath and the sanctity of the oath. Unless men can be assured of the validity and inviolable quality of the word they give and have accepted among themselves in affairs of great moment, society itself is supremely placed in jeopardy. We consider it our duty to remind all our people, and particularly those in positions of authority, of the grave nature of a deliberate promise made to God and of the obligations in conscience deriving from it.

10

We mention these matters because it is our duty to enunciate moral principles for the benefit of our people. It is also our duty to do all in our power to promote and preserve public order. Public order is such a great good that people must be prepared even to suffer the diminution of their rights for a time in order that it be preserved. Experience all too clearly shows that violence or revolution, even if it be in defence of citizens' rights, generally results in still graver harm to the common good than is involved in any abuse of power.

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The point is of first importance here in our present circumstances, when the godless forces of great world powers insidiously foment disorder and solicit with specious arguments the allegiance of the dissatisfied millions who, at this moment, feel themselves despised and uncared for. With all the authority which we command we exhort our long-suffering and patient people to resist in a spirit of faith and of loyalty to the Church the blandishments of those who would urge them to anarchy, only to enslave them thereafter to such barbarism as they have never

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known or thought possible.

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Annexure thereto:
Pastoral
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(Contd.)

10 With the same authority we denounce
all use of violence and command you to
abstain from it, no matter how serious the
provocation. The mission of Christ's
Church is the mission of Our Lord
Himself, a mission of peace, of reconcil-
iation, of bringing men through
practical acknowledgment of Him who is
their Father, to a daily humble acknow-
ledgment of all other men who are their
brothers through creation and redemption.

20 How can we possibly profess to
be followers of Christ if we do not try
to respect one another and care for one
another? Our Lord's words are quite un-
mistakeable on this point. They are both
a warning and a programming of action: "By
this shall all men know that you are my
disciples, if you love one another"
(John 13, 35). He even goes further; He
identifies Himself with our fellow-men;
asks us to recognise in Him this sacrament
of our redeemed human nature which He
Himself bore; tells us that He will take
as done to Himself what we do or deny to
our fellow-men - His brother. Hear His
words again and take up in daily duty the
challenge that they offer in these confused
30 times: "As long as you did it to one of
these my least brethren you did it to me"
(Matt.25, 40).

40 It is not a question of words only,
of talking, of mouthing professions of
brotherhood; its a question of doing, of
acting. And God knows there is plenty of
opportunity about us for exercising practical
charity here in Rhodesia. In spite of
undoubted progress in many fields of
social endeavour during recent years, in
spite of vast sums spent on education,
medical services, housing, agriculture and
the rest, there is still so much left
to be done. Look at the inequitable
distribution of land in this country; the
scandal of those working conditions in which

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(Contd.)

normal family life is made impossible; the often inadequate wages paid to servants; the humiliations of discriminatory legislation; the inequalities of opportunity in education. Examine these things and judge if we can ever be a united and happy people while they remain. We hear much about our rights these days, but little about our responsibilities as a supposedly Christian people.

10

We surely have the simple but all important responsibility of at least trying to know one another if we are to hope to live together now and in the years to come. Yet after all this time the two major groups of Rhodesians, the Africans and the Europeans, have made little significant contact. They converse little with one another and not only convention, but the very laws of the country themselves, preclude any immediate hope of their achieving greater understanding. In fact, the possibility of such an attempt at mutual comprehension grows daily more remote.

20

In Christ's teaching alone, and in its constant practice about us, can we have any hope for the future. Not only is this true of each of us as individuals, but it is of immense importance to those who exercise political power and claim to be Christian. The complicated problem of racial harmony in this country is one not simply of social adjustment but of social justice. It is essentially a moral problem and this is why we the bishops have a right and a duty to speak about it, in season and out of season.

30

But this great problem can be solved if we will but make a united and serious effort to try to relate our conduct to our creed and to be Christian in fact and not in name only. These are momentous times in the history of this country. Grave provocation has been

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10 given to very many people. Their hurt must be assuaged. They must be given hope; their legitimate grievances must be examined fairly and with genuine desire to remove them. It is simply courting disaster and building up massive resentment for the years ahead to offer temporary palliatives or to try to reduce to silence the voices of those who speak piteously, pleading against the indignity of being regarded as second-class citizens, of being governed with mere token representation, of being made to feel that theirs is a permanent position of inferiority with little hope.

20 All this we long ago expounded for you in greater detail in our Joint Pastoral, "Peace through Justice." It is a shameful comment on us all that the outside world can tell us, as they have recently done in the Press, that the Catholics of Rhodesia do not seem to have heard the message.

30 We beg of you all to make a new effort to accept the challenge which the Gospel of Our Divine Lord presents to you - to take His words seriously; to try to understand one another; to respect one another and, in a spirit of sorrow for past neglect, Magdalene-like to break in prodigal profusion the precious balm of your brotherly love about the feet of your neighbour - Christ.

FRANCIS W. MARKALL, S.J.,
Archbishop of Salisbury

ALOYSIUS HAENE, S.M.B.
Bishop of Gwelo.

ADOLPHUS G. SCHMITT, C.M.M.,
Bishop of Bulawayo.

DONAL R. LAMONT, O.C.A.R.M.,
Bishop of Umtali.

40 IGNATIUS PRIETO, S.M.I.,
Bishop of Wankie.

The first Sunday of Advent, the 28th
November, 1965.

In the General
Division

No.43

Annexure thereto:
Pastoral
Instructions
(Contd.)

In the General
Division

NO. 44

No.44

AFFIDAVIT OF CLAUDE
LLEWELLEN COOK

Case No.G.D.247/66

Affidavit of
Claude Llewellen
Cook
Dated 31st May
1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison Second
Respondent

AFFIDAVIT OF CLAUDE LLEWELLEN COOK

I, CLAUDE LLEWELLEN COOK, hereby
make oath and say that:- 20

1. I am the Editor of Inter-African News Agency (Private) Limited (commonly known as "IANA").
2. On the 11th November, 1965, my agency received from the office of the Governor a statement by the Governor, a copy of which is annexed hereto marked "A".
3. On the 14th November, 1965, my agency received from the office of the Governor a statement by the Governor, a copy of which is annexed hereto marked "B". 30

4. My agency distributed the contents of the said statements to the subscribers to the agency's news services.

In the General Division

No.44

Affidavit of
Claude Llewellen
Cook
Dated 31st May
1966
(Contd.)

SWORN at SALISBURY this 31st day
of May 1966.

(Sgd.)...C.L. COOK....

BEFORE ME,

(Sgd.)...F.M. GUEST.....

NO. 45

No.45

ANNEXURE "A" THERETO:
STATEMENT BY THE GOVERNOR.

Annexure "A"
thereto:
Statement by
the Governor
Dated
11th November
1965

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ANNEXURE "A"

STATEMENT BY THE GOVERNOR OF 11TH NOVEMBER
1965

"The Government have made an unconstitutional declaration of independence.

I have received the following message from Her Majesty's Secretary of State for Commonwealth Relations:-

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"I have it in command from Her Majesty to inform you that it is her Majesty's pleasure that, in the event of an unconstitutional declaration of independence, Mr. Ian Smith and the other persons holding office as Ministers of the Government of Southern Rhodesia or as Deputy Ministers cease to hold office.

30

I am commanded by Her Majesty to instruct you in that event to convey Her Majesty's pleasure in this matter to Mr. Smith and otherwise to publish it in such manner as you may deem fit."

In the General
Division

No.45

Annexure "A"
thereto:
Statement by
the Governor
Dated
11th November
1965
(Contd.)

In accordance with these instructions I have informed Mr. Smith and his colleagues that they no longer hold office. I call on the citizens of Rhodesia to refrain from all acts which would further the objectives of the illegal authorities. Subject to that, it is the duty of all citizens to maintain law and order in the country and to carry on with their normal tasks. This applies equally to the judiciary, the armed services, the police, and the public service."

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No.46

Annexure "B"
thereto:
Statement by
the Governor
Dated
14th November
1965

NO. 46

ANNEXURE "B" THERETO:
STATEMENT BY THE GOVERNOR

ANNEXURE "B"

STATEMENT BY THE GOVERNOR OF THE 14TH
NOVEMBER, 1965

"It is with much regret that I feel compelled to make this statement.

20

Rhodesians will wish to know my attitude and my position. I remain your legal Governor, and my duty is to uphold the lawful constitution. I will not recognise the now illegal Government or the new constitution they have presented to the country. Mr. Smith and his colleagues no longer hold office lawfully. I call on the citizens of Rhodesia to refrain from all acts which would further the objectives of the illegal authorities. Subject to that it is the duty of all citizens to maintain law and order in the country and to carry on with their normal tasks. This applies equally to the judiciary, the armed services, the police and the public services.

30

I have been asked by Mr. Smith to resign from my office as Governor. I hold my office at the pleasure of Her Majesty the Queen and I will only resign if asked by Her Majesty to do so. Her

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Majesty has asked me to continue in office and I therefore remain your legal Governor and the lawfully constituted authority in Rhodesia.

In the General
Division

No.46

10 It is my sincere hope that law-
fully constituted Government will be
restored in this country at the earliest
possible moment, and in the meantime I
stress the necessity for all people
to remain calm and to assist the armed
services and the police to continue to
maintain law and order.

Annexure "B"
thereto:
Statement by
the Governor
Dated
14th November
1965
(Contd.)

I now repeat the message I received from Her Majesty's Secretary of State for Commonwealth Relations, which I tried to make public immediately after the illegal declaration of independence.

20 "I have it in command from Her Majesty
the Queen to inform you that it is
Her Majesty's pleasure that, in
the event of an unconstitutional
declaration of independence, Mr. Ian
Smith and the other persons holding
office as Ministers of the Government
of Southern Rhodesia or as Deputy
Ministers cease to hold office.

30 I am commanded by Her Majesty to
instruct you in that event to convey
Her Majesty's pleasure in this matter
to Mr. Smith and otherwise to publish
it in such manner as you may deem fit."

In the General
Division

No. 46A

NO. 46A

LETTER FROM APPELLATE DIVISION
OF THE HIGH COURT TO MESSRS.
SCANLEN AND HOLDERNESS.

Letter from
Appellate
Division of
the High Court
to Messrs.
Scanlen and
Holderness
Dated 10th
January 1967

Appellate Division of the
High Court,
P.O. Box 8159,
Causeway,
Salisbury.

Ref: CIV. 558/66/18/67

Messrs. Scanlen and Holderness,
Barclays Bank Building,
Manica Road and Inez Terrace,
SALISBURY.

10

10th January, 1967.

Dear Sirs,

APPEAL: STELLA MADZIMBAMUTO AND
DESMOND WILLIAM LARDNER-BURKE AND
FREDERICK PHILLIP GEORGE

My Notice of Hearing dated the 10th
December, 1966, refers.

20

I am directed by the court to inform you
that the court would like the following
points argued during the hearing of the case:

1. What system of law was applied and what
judicial officers applied that law
during the German occupation of the
Channel Islands during the last war?
2. On the reoccupation of the Islands by
Britain what recognition was given
to the law as applied by the invader?
3. To what extent is what happened in the
Channel Islands relevant to the present
situation?
4. The court would like to be supplied
with translations of all the
judgments of the German Courts in
the recent Bank Note cases.

30

153.

Will you kindly supply six copies
of the translations mentioned in
paragraph 4 above.

Yours faithfully,

REGISTRAR

JG/DET.

In the General
Division

No.46A

Letter from
Appellate
Division of
the High Court
to Messrs.
Scanlen and
Holderness
Dated 10th
January 1967
(Contd.)

154.

In the General
Division

NO. 47

No.47

AFFIDAVIT OF FRANK GEORGE
CAPON

Case No. G.D.247/66.

Affidavit of
Frank George
Capon
Dated 31st May
1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT OF FRANK GEORGE CAPON

I, FRANK GEORGE CAPON, hereby make oath
and say that:-

1. I am the Assistant Manager of the
Salisbury Branch of the Rhodesian
Printing and Publishing Company
Limited, the printers and publishers of
"The Rhodesia Herald", which circulates
throughout Rhodesia.

20

2. In the issue of "The Rhodesia Herald"
dated Saturday, November 13, 1965 on
page 1 there was published a news item
emanating from London through Iana-
Reuter, headlined "Governor was
asked to agree to substitutes",
reporting a speech said to have been
made on the previous day in the House
of Commons by the British Prime
Minister, Mr. Wilson. The following
are extracts from the said news item:-

30

'Regarding the Judiciary, the police and the Armed Forces in Rhodesia, he /i.e. the British Prime Minister/ said:

In the General
Division

—————
No.47

10 "The first thing that must be clear is that if any of them are asked to take an oath of allegiance to the illegal authority, it will be their duty to refuse, because their cath of allegiance to the Queen - to the Crown - is absolute."

Affidavit of
Frank George
Capon
Dated 31st May
1966
(Contd.)

Mr. Wilson said it was the duty of public servants to remain at their posts to maintain essential public services and public order.

"But to ask for some simple directive for their guidance is in these circumstances crying for the Moon".

20

Officers would have to decide whether any particular course of action furthered the illegal authorities.

In the last resort, the same test must apply to the Armed Forces, many of whom must now be facing a clash of loyalties which must be almost intolerable today.'

30

3. In the issue of "The Rhodesia Herald" dated Monday, November 15, 1965 on page 1 there was published a news item, headlined "P.M. issues statement on position of the Governor", reporting a statement said to have been issued by the Prime Minister, Mr. Ian Smith, that morning. The following are extracts from the said statement as reported in the said news item:-

40

"On Thursday, November 11, at about 11 o'clock I visited Sir Humphrey Gibbs and informed him

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NO. 48

AFFIDAVIT OF EILEEN MARY
HADDON

In the General
Division

No.48

Case No. G.D.247/66

Affidavit of
Eileen Mary
Haddon
Dated
31st May, 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintend- Respondent
ent of the Gwelo Prison

AFFIDAVIT OF EILEEN MARY HADDON

I, EILEEN MARY HADDON, hereby make
oath and say that:-

- 20 1. I reside at 16, Lauchlan Avenue,
Meyrick Park, Salisbury.
- 30 2. On or soon after 11th November, 1965,
I heard in Salisbury's wireless
broadcast by the British Broadcasting
Corporation which included a report to
the effect that the Governor had
said that it was the duty of all
citizens, including the judiciary,
the armed services, the police and
the public service, to maintain law
and order and carry on with their
normal tasks, subject to refraining
from acts which would further the
objectives of the illegal authorities.

SWORN at SALISBURY this 31st day of May 1966.

(Sgd) E.M. Haddon

Before me, (Sgd.) L.W. Lewis
Commissioner of Oaths.

In the General
Division

NO.49

No.49

AFFIDAVIT OF CHARLES RICHARD
WHITTAKER

Affidavit of
Charles Richard
Whittaker
Dated
31st May 1966

Case No. G.D.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELL MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of the Gwelo Prison

AFFIDAVIT OF CHARLES RICHARD WHITTAKER

I CHARLES RICHARD WHITTAKER, hereby
make oath and say that:-

1. I reside at 8, Langham, University 20
College of Rhodesia and Nyasaland,
Salisbury.
2. Within a few days of 11th November, 30
1965 I heard in Salisbury a wireless
broadcast by the British Broadcasting
Corporation World Service which
included a report to the effect
that the British Government had
instructed civil servants in Rhodesia
to remain at their posts and carry on 30
essential services, but not to
actively further the aims of the Smith
Regime.

SWORN at SALISBURY this 31st day of May 1966.

(Sgd) C.R. Whittaker

BEFORE ME,

(Sgd) L.W. Lewis

AFFIDAVIT OF ERIC WILLIAM PAPPS

Case No. G.D.247/66

In the General
Division

No.50

Affidavit of
Eric William
Papps
Dated
25th May 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of the Gwelo Prison

Second
Respondent

AFFIDAVIT OF ERIC WILLIAM PAPPS

I, ERIC WILLIAM PAPPS, hereby make oath
and say that:-

- 20 1. I am a journalist employed by Inter-
African News Agency (Private) Limited
as a senior reporter.
- 30 2. On the afternoon of 2nd February, 1966,
in the course of my duties as a reporter
I attended Parliament where I heard
Mr. DESMOND WILLIAM LARDNER-BURKE
move that the House should resolve
that a proclamation be issued declaring
the existence of a state of emergency
in Rhodesia, and I heard the speech
made by the said MR. DESMOND WILLIAM
LARDNER-BURKE in support of such
resolution.
3. When listening to the said speech
I had in my possession a copy of the

In the General
Division

No.50

Affidavit of
Eric William
Papps
Dated
25th May 1966
(Contd.)

press statement, Annexure "A" to
the Applicant's Replying Affidavit,
and I compared the said speech as
it was being made with the contents
of the said press statement.

4. The speech corresponded with the
contents of the said press statement
except for a few immaterial
departures therefrom.

SWORN at SALISBURY this 25th day of
May 1966.

10

(Sgd) E.W. PAPPS

BEFORE ME,

(Sgd) L.W. LEWIS

161.

NO.51

AFFIDAVIT OF CHARLES PHILIP
BLAKNEY

In the General
Division

No.51

Case No.G.D.247/66

Affidavit of
Charles Philip
Blakney
Dated 31st May
1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superin- Respondent
tendent of the Gwelo Prison

AFFIDAVIT OF CHARLES PHILIP BLAKNEY

I, CHARLES PHILIP BLAKNEY, hereby
make oath and say that:-

- 20 1. I am a Minister of the United Church
of Christ and am employed as a
Missionary by the United Church
Board for World Ministries.
2. I have lived in Rhodesia from
December, 1955 until April, 1961
and from April, 1963 until now.
- 30 3. During the period from December,
1955 to April, 1961, I lived at
Chikore Mission in the Chipinga
district, and during that time I
travelled extensively in and became
familiar with the Tribal Trust Lands
in the Chipinga district (the
Mutema Musikavanhu and Ndowoyo

In the General
Division

No.51

Affidavit of
Charles Philip
Blakney
Dated 31st May
1966
(Contd.)

- Tribal Trust Lands). Since April, 1963, I have lived in Salisbury, from where I have made frequent visits to the Chipinga district, including the said Tribal Trust Lands.
4. In the course of my duties as a Minister I regularly visit the Salisbury African areas of Harare, Highfield, Mufakose and Mabvuku, normally visiting one or more of such areas five days a week. 10
 5. I speak and understand the Chindau dialect of Shona.
 6. Since 11th November, 1965, both in the African areas of Salisbury and in the Tribal Trust Land in the Chipinga district, I have discussed with many Africans their attitude towards the present Government and its policies and the state of national affairs. 20
My work brings me daily into contact with African people of all persuasions and educational levels. In my numerous discussions I have not encountered one African who supports the present Government and its policies or who approves of the present state of national affairs. Moreover the Africans with whom I have had such discussions have reported that the people in the areas known to them are opposed to Rhodesia being independent of Britain under the leadership of the present Government. Very many have expressed to me their opposition in vigorous terms. 30
 7. Since 11th November, 1965, I have asked two chiefs in the Tribal Trust Lands in the Chipinga district their views and their assessment of the views of other chiefs that they have met at various meetings. Not only did they express articulately (in their own dialect) their unmixed opposition to the present 40

Government's course of action, but they both asserted, quite independently of each other, that as far as they could tell few other chiefs in the country supported the present Government out of choice. They pointed out that they were in an exceedingly difficult position, however, to express their real views honestly, because of their financial dependence on the Government and because they believed that opposition to the Government might result in the loss of their chieftainships.

In the General Division

No.51

Affidavit of Charles Philip Blakney Dated 31st May 1966 (Contd.)

10

8. On the basis of my discussions described above and of reports I have received from my mission's African Ministers and teachers living in the Tribal Trust Lands in the Chipinga district I consider that the great majority of the people in such Tribal Trust Lands are opposed to the present Government and the present state of national affairs.

20

9. Similarly, on the basis of my discussions described above I consider that the great majority of the people living in the African areas of Salisbury are opposed to the present Government and the present state of national affairs.

30

SWORN at SALISBURY this 31st day of May 1966.

(Sgd.) CHARLES P. BLAKNEY

Before me,

(Sgd.) L.W. LEWIS

Commissioner of Oaths.



In the General
Division

Case No.G.D.247/66

No.52

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Affidavit of
Sampson Smith
Chibi
Dated
27th May 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

10

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of the Gwelo Prison Respondent

AFFIDAVIT OF SAMPSON SMITH CHIBI

I, SAMPSON SMITH CHIBI, hereby make
oath and say that:

1. I am the permanent representative in
Rhodesia of the International
Federation of Christian Trade Unions.

2. In the course of my duties, which
I perform full time, I travel widely
in Rhodesia speaking to all classes
of Africans but particularly to
workers and Trade Union officials.
Since 21st November, 1965, when I
returned to this country from the
United States of America, I have
travelled 22,000 miles in Rhodesia,
and met hundreds of persons.

20

3. I am able to say from personal
observation and experience that the
vast majority of Africans did not
and do not support the actions of
the then Ministers of the Government
in declaring independence for
Rhodesia.

30

4. The vast majority look to the British Government to restore constitutional rule in this country, by peaceful means if possible.
5. The vast majority do not regard the said Minister as exercising lawful authority in this country.

In the General
Division

No.52

Affidavit of
Sampson Smith
Chibi
Dated
27th May 1966
(Contd.)

SWORN at SALISBURY this 27th day of
May 1966.

10

(Sgd) S.S.Chibi

Before me,

(Sgd) (signature indecipherable)

Commissioner of Oaths.

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In the General
Division

No.53

Affidavit of
Marshall Warne
Murphree
Dated 31st May
1966

NO.53

AFFIDAVIT OF MARSHALL
WARNE MURPHREE

Case No. G.D.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE 10
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of the Gwelo Prison Respondent

AFFIDAVIT OF MARSHALL WARNE MURPHREE

I, Marshall Warne Murphree, hereby make
oath and say that:-

1. Since September, 1955, I 20
have been employed as a missionary by
the Rhodesia Annual Conference of the
Methodist Church, and I am at present
employed as the principal of the
Nyamuzuwe Secondary School in the
Mtoko Tribal Trust Land.
2. I hold the degrees of M.A. in 30
Anthropology (Northwestern
University, U.S.A.) and Ph.D. in
Social Anthropology (University of
London). My studies have had
particular reference to the Shona
peoples of Rhodesia.
3. From 1956 to 1960 I worked as a

school manager in the Uzumba, Pfungwe, Maramba and Mtoko Tribal Trust Lands.

In the General
Division

No.53

Affidavit of
Marshall Warne
Murphree
Dated 31st May
1966
(Contd.)

4. At intervals in the period from 1962 to 1964 I did anthropological field work amongst Shona people in the Mtoko, Maranke and Chiduku Tribal Trust Lands.
- 10 5. I am a fluent Shona speaker, having learned the language in my childhood near my birthplace at Umtali.
6. Since 30th December, 1965, I have had extensive contacts with people in the Mtoko Tribal Trust Land, and have had discussions with many African ministers, teachers, farmers and businessmen. I believe that the people with whom I have had discussions
20 comprise a fair cross-section of the adult male population of the Mtoko Tribal Trust Land as a whole.
7. I have found the prevailing attitude of the people with whom I have had discussions to be that they are dissatisfied with the present state of national affairs. There is deep dissatisfaction over the economic privations that the present national situation imposes and continued dis-
30 content over the losing struggle to make a satisfactory livelihood in a rural situation involving over-population and inadequate agricultural resources. Whatever the exact reasons are for these factors in contemporary tribal life, they are by and large laid at the door of the Government in the minds of the people with whom I talked. Although
40 the exact implications of the unilateral declaration of independence are not generally understood, there is disapproval of this move in so far as it is taken to mean the end of Britain's role in the affairs of this

169.

NO. 54
AFFIDAVIT OF SAMSON JOHN
MAZIBISA

In the General
Division

No.54

Case No.G.D.247/66

Affidavit of
Samson John
Mazibisa
Dated 31st May
1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

AFFIDAVIT OF SAMSON JOHN MAZIBISA

I, SAMSON JOHN MAZIBISA, do hereby
make oath and say:

- 20 1. I am a miner operating at Makaha,
Mtoko District, and until last month
was a travelling salesman for a drug
manufacturer.
2. I have been an active politician for
more than four years and have twice
stood for election to the Legislative
Assembly.
- 30 3. I have travelled widely in Rhodesia,
and have had dealings with large
numbers of people since the 11th November,
1965, both as a salesman and as a
politician.
4. On the basis of my aforesaid contacts
with people, I verily believe that the

171.

NO. 55
AFFIDAVIT OF DIDYMUS NOEL
EDWIN MUTASA

In the General
Division

No.55

Affidavit of
Didymus Noel
Edwin Mutasa
Dated
31st May 1966

Case No. G.D.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superinten- Respondent
dent of the Gwelo Prison

AFFIDAVIT OF DIDYMUS NOEL EDWIN MUTASA

I, DIDYMUS NOEL EDWIN MUTASA, hereby
make oath and say that:-

- 20 1. I reside in Salisbury, but have land
allocated to me near Rusape, and I have
relatives residing in the Makoni and
Chiduku Tribal Trust Lands.
- 30 2. Since 11th November, 1965, I have
discussed the state of national affairs
with many Africans living in the
African urban areas of Salisbury
and in the Makoni and Inyanga Districts.
Not a single one of such Africans
supported the present government or
approved of the unilateral declaration
of independence or the present state
of national affairs.

SWORN AT SALISBURY this 31st day of May 1966.

(Sgd). D.N.E. MUTASA

Before me, (Sgd) L.W. LEWIS

Commissioner of Oaths.

In the General
Division

No.56

NO. 56

AFFIDAVIT OF WILLIAM LESLIE
TAYLOR

Case No.G.D.247/66

Affidavit of
William Leslie
Taylor
Dated
24th May 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of the Gwelo Prison

Second
Respondent

AFFIDAVIT OF WILLIAM LESLIE TAYLOR

I, WILLIAM LESLIE TAYLOR, hereby make
oath and say that:-

1. I am Professor of Economics and Head
of the Department of Economics at
the University College of Rhodesia and
Nyasaland and hold the degrees of
B.A. (New Zealand), M.A. (New Zealand)
and M.Sc. (Econ.) (London).

20

2. I lectured in economics at the
University of Cape Town from 1954
until I became a lecturer in economics
at the University College of Rhodesia
and Nyasaland in January, 1957,
since when I have taught economics
at the University College.

30

3. I am a consultant to the World Bank
and to the United Nations Educational
Scientific and Cultural Organisation

(UNESCO) for which bodies I have undertaken missions inter alia in Basutoland and Swaziland. From December, 1960 to May, 1961 I was a visiting Professor of Economics at the University of California (Los Angeles).

In the General
Division

No.56

Affidavit of
William Leslie
Taylor
Dated
24th May 1966
(Contd.)

- 10 4. Both before and since 11th November, 1965, I have given and continue to give thorough and detailed consideration to the question of the effect on the economy of Rhodesia of the imposition of economic sanctions, and my opinions set out below are the result of such consideration and based on my knowledge and experience as an economist.
- 20 5. I consider that the economic sanctions which since 11th November, 1965 the British Government and other Governments have imposed against Rhodesia have had an adverse effect on the Rhodesian economy through the curtailment of export outlets and a consequential reduction in the level of economic activity.
- 30 6. The major economic sanctions imposed by the British Government and other Governments against Rhodesia, namely the trade embargoes on tobacco and sugar and the measures adopted by the Zambian Government against Rhodesian manufacturers, cannot fail to have severely detrimental effects on the Rhodesian economy by depriving the country of its major sources of foreign exchange earnings and undermining the basis for future economic development. The tobacco industry, which has played a vital role in the development of the agricultural economy as a whole, is largely dependent on the United Kingdom market, while the exclusion of Rhodesia from the Commonwealth Sugar Agreement must of
- 40

In the General
Division

No. 56

Affidavit of
William Leslie
Taylor
Dated
24th May 1966
(Contd.)

necessity be a very serious set back to the future progress of that industry. It is also generally accepted that the future of manufacturing industry in Rhodesia is geared to the market requirements of Zambia and other countries to the north and that only a partial diversion of such trade to South Africa is possible.

10

7. The effect of these sanctions may be concealed for a short time by artificial devices such as Government stock-piling of tobacco, credit creation and employment orders; but that such policies will only serve to aggravate the basic problem and will cause a more violent disruption of the economy in the long run.

8. Similarly, while measures taken to date by the Reserve Bank of Rhodesia have been successful, as far as is known, in averting the worst consequences of Rhodesia's exclusion from the Sterling Area and the effect of other financial sanctions, the long-term impact of financial sanctions will inevitably lead to financial instability and a complete cessation of overseas investment funds essential for future development.

20

30

9. In the light of these considerations the economic survival of Rhodesia would only be possible in terms of a greatly curtailed level of economic activity, a marked reduction in the standard of living of all races and the destruction of a firm basis for future economic progress.

10. As an economist I consider that it is impossible for any economist or other person at this stage to form a reliable judgment that the

40

175.

continued imposition of economic sanctions will not lead to a complete economic collapse in Rhodesia or that it will do so.

SWORN at SALISBURY this 24th day of May 1966.

(Sgd) W.L. TAYLOR

BEFORE ME,

(Sgd) (indecipherable)

Commissioner of Oaths.

In the General
Division

No.56

Affidavit of
William Leslie
Taylor
Dated
24th May 1966
(Contd.)

10

In the General
Division

No.57

Affidavit of
Timothy Roger
Champion
Curtin
Dated
27th May 1966

NO. 57

AFFIDAVIT OF TIMOTHY ROGER
CHAMPION CURTIN

IN THE GENERAL DIVISION Case No.G.D.247/66
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent 10
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of the Gwelo Prison Respondent

AFFIDAVIT OF TIMOTHY ROGER CHAMPION CURTIN

I, TIMOTHY ROGER CHAMPION CURTIN, hereby
make oath and say that:-

1. I am and have been since the beginning
of 1964 a Lecturer in Economics at 20
the University College of Rhodesia
and Nyasaland, and I hold the
degrees of B.A. (London) and M.Sc.
(Econ.) (London).
2. Both before and since 11th November
1965, I have given and continue to
give thorough and detailed consideration
to the effect on the economy of
Rhodesia of the imposition of 30
economic sanctions.
3. I have read the affidavit of WILLIAM
LESLIE TAYLOR and I agree with
paragraphs 5, 6, 7, 8, 9 and 10
thereof.

SWORN at SALISBURY this 27th day
of May 1966.

(Sgd) T.R.C. CURTIN

Before me,

(Sgd) (indecipherable)

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NO.58
I N D E X

Case No.G.D.247/66

In the General
Division
No.58
Index

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

I N D E X

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In the General
Division

NO. 59

No.59

FURTHER AFFIDAVIT OF
FIRST RESPONDENT

Further
Affidavit of
First
Respondent
Dated 15th
June 1966

Case No.G.D.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

FURTHER AFFIDAVIT OF FIRST RESPONDENT

I, DESMOND WILLIAM LARDNER-BURKE, do
hereby make oath and say that:-

1. Ad paragraph 4(b) of the applicant's
replying affidavit, I deny each and
every allegation contained in the
said paragraph and say that there is
no obligation on me to disclose the
facts on which it appeared to me to
be necessary and expedient in the
public interest to act as I have done.
I say further that it would be
contrary to the public interest for
me to disclose such facts.

20

2. Ad paragraph 4(d) of the applicant's
replying affidavit, I deny each and
every allegation contained in the
said paragraph and repeat what I
have said in paragraph 9 of my

30

earlier affidavit. The only ground on which I ordered the original detention of the applicant's husband and his continued detention thereafter was as is set out in that paragraph. In any event I say that there has been no rebellion in the present case.

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Further
Affidavit of
First
Respondent
Dated 15th
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(Contd.)

- 10 3. The fact that I have not dealt with other portions of the applicant's replying affidavit or the other affidavits filed therewith must not be taken as an admission by me of the allegations contained therein.

SWORN at SALISBURY this 15th day of June, 1966.

(Sgd) D. LARDNER-BURKE

Before me,

(Sgd) (signature indecipherable)

20

Commissioner of Oaths.

In the General
Division

No.60

Further Affidavit
of Clifford
Walter Dupont
Dated
21st June 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison Second
Respondent

10

FURTHER AFFIDAVIT OF CLIFFORD WALTER DUPONT

I, CLIFFORD WALTER DUPONT, do hereby
make oath and say that:-

1. Ad paragraph 8 of the applicant's
replying affidavit,

I deny that I have no personal
knowledge of the matters stated in
paragraphs 4, 5, 6, 7, 8 and 9 of
my earlier affidavit.

20

2. My knowledge of these matters
has come to me in my capacity as
the officer Administering the
Government and, in part at least,
it is common and public knowledge.

3. In the course of my official
duties -

30

(a) I obtain copies of the minutes
of all Cabinet meetings;

(b) I obtain copies of all Cabinet

memoranda, i.e. memoranda submitted by Ministers to the Cabinet for its consideration;

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- (c) I am kept advised as to the state of the security of the country;
- (d) I am kept advised as to the work of the various Cabinet sub-committees, eight in number.

Further Affidavit of Clifford Walter Dupont Dated 21st June 1966 (Contd.)

- 10 4. From my own knowledge I am able to say, inter alia -
- (a) that the present Government is in full and effective control of Rhodesia;
- (b) that it is the only actual government and that no other effective government is in existence;
- 20 (c) that it is established in the customary seats of power;
- (d) that it exercises all the ordinary functions of government;
- (e) that there is a general obedience to the authority of the government.
5. In so far as I have expressed an opinion in the last sentence of paragraph 9 of my earlier affidavit, such opinion is based on my personal knowledge obtained by me in my official capacity.
- 30 6. It is contrary to the public interest to disclose the information which comes to me under the various sub-headings of paragraph 3 hereof and the information on which my opinion referred to above is based.
7. Ad paragraphs 10(b) and 11(b) of the applicant's replying affidavit.

I deny each and every allegation contained

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No.60

Further Affidavit
of Clifford
Walter Dupont
Dated
21st June 1966
(Contd.)

in the said paragraphs and I repeat what I said in paragraphs 11, 12 and 13 of my earlier affidavit. The only grounds on which, on the 14th February, 1966, I proclaimed that a state of emergency existed, and made the regulations referred to, were as set out in those paragraphs. In any event I say that there has been no rebellion in the present case.

10

8. Ad paragraph 10(c) of the applicant's replying affidavit.

I deny the allegation that no facts exist which could substantiate the grounds for the said declaration of emergency on the 4th February, 1966, and I say that there is no obligation on me to disclose the said grounds.

9. I further submit that the facts set out in the various sub-paragraphs of paragraph 4 of this affidavit are matters of common and general knowledge and notorious among all reasonably informed people in Rhodesia and that accordingly this Honourable Court will take judicial notice thereof.

20

10. The fact that I have not dealt with other portions of the applicant's replying affidavit or the other affidavits filed therewith must not be taken as an admission by me of the allegations contained therein.

30

SWORN TO at SALISBURY this 21st day of June, 1966.

(Sgd) CLIFFORD DUPONT

Before me,

(signature indecipherable)

Commissioner of Oaths.

NO. 61

FURTHER AFFIDAVIT OF THOMAS ARNOLDUS
THERON BOSMAN

In the General
Division

No.61

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Case No.GD.247/66

Further Affidavit
of Thomas Arnoldus
Theron Bosman
Dated
21st June 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister First
of Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten- Second
dent of the Gwelo Prison Respondent

FURTHER AFFIDAVIT OF THOMAS ARNOLDUS THERON
BOSMAN

20 Ad paragraphs 7(c) and 8(1)(c) and
the second sentence of paragraph 8(2)(a)
of the applicant's replying affidavit
I say as follows:

1. The Emergency Powers (Control of
Publications) Regulations, 1966, published
in Rhodesia Government Notice No.61
of 1966, were published and came into
force on the 5th February, 1966.

30 2. On the 7th February, 1966, one Leo
Solomon Baron lodged with the General
Division of this Honourable Court
at Bulawayo a notice of motion in
which was raised the same con-
stitutional issues as are raised in
the present proceedings. I was
immediately consulted by the respondents

In the General
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Further Affidavit
of Thomas Arnoldus
Theron Bosman
Dated
21st June 1966
(Contd.)

- therein and by the Government as to the course to be adopted in relation to these proceedings (hereinafter referred to as the Baron case).
3. At about the same time I was also consulted about alleged contraventions by various newspapers published by the Rhodesia Printing and Publishing Company (which I assume is what the applicant means by "the national press") of section 5 of the aforementioned regulations. I was also informed by officials of the responsible Ministry that the Rhodesia Printing and Publishing Company was in other respects complying with the aforementioned regulations and obeying the directions of censorship officers. 10
4. As to the course to be adopted in the Baron case, I advised the respondents and the Government that it was desirable that the constitutional questions raised therein should be fully argued before this Honourable Court and that some considerable time would be required for an adequate argument on these complex questions to be properly prepared. 30
5. As to the course to be adopted in relation to the alleged offences committed by the Rhodesia Printing and Publishing Company, as I had reason to believe that any prosecution therefor would result in the raising before the magistrates court, inter alia, of the very issues pending before this Honourable Court in the Baron case and as I was of the opinion that no real prejudice would be caused to the Government if such a prosecution was postponed, I decided that it would be 40

undesirable to launch such a prosecution until the Baron case had been brought to a conclusion in the High Court. In the meantime, however, I ordered the police to investigate the alleged offences and to prepare a docket in respect thereof.

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- 10 6. On the 24th March, 1966, the Baron case was withdrawn, but on the same day the said Leo Solomon Baron instituted similar proceedings before this Honourable Court at Salisbury raising the same constitutional questions. Furthermore, in the meantime, that is on the 24th February, 1966, the present proceedings were commenced in which the same constitutional issues were again raised.
- 20

On the 14th March, 1966, the respondents in the present proceedings applied to this Honourable Court for a postponement of the present proceedings to enable them properly to prepare their case on the complex issues involved. This request was granted by this Honourable Court in terms which confirmed my view that these issues should not be argued without full preparation and that some considerable time would be needed for that preparation to be completed.

30

8. I felt then and still feel that it would be inadvisable to institute a prosecution in the magistrates court in which grave constitutional issues were bound to arise while the same issues were pending before this Honourable Court.
- 40

9. On the 29th March, 1966, the Constitutional Council delivered an adverse report on, inter alia,

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Further Affidavit
of Thomas Arnoldus
Theron Bosman
Dated
21st June 1966
(Contd.)

section 5 of the aforementioned regulations on the ground that it was to a certain extent inconsistent with section 74 of the Declaration of Rights contained in the Constitution of Rhodesia, 1965.

10. Following on this report, on the 22nd April, 1966, the said section 5 of the aforementioned regulations was repealed by the Emergency Powers (Control of Publications) (Amendment) Regulations, 1966 (No.1), published in Rhodesia Government Notice No. 266 of 1966. 10
11. The present position is that it is unlikely that there will be any prosecution of the Rhodesia Printing and Publishing Company for the aforementioned alleged offences in view of the fact that the relevant section has now been repealed. 20
12. In the circumstances, as set out above, the fact that no prosecution has taken place and will probably not take place affords no evidence whatsoever that the Government has not governed in accordance with the constitution of Rhodesia, 1965, nor does the fact that the Rhodesia Printing and Publishing Company failed to comply with section 5 of the aforementioned regulations afford any evidence that the people of Rhodesia have not overwhelmingly conformed to or accepted the present Government or the Constitution of Rhodesia, 1965. 30
40
While the facts disclose that the Rhodesia Printing and Publishing Company failed to comply with these regulations in one respect only, they do not disclose that the said company openly and successfully

flouted the Constitution of Rhodesia, 1965, or the Government holding office thereunder, nor do they disclose facts which support the submission made in the second sentence of paragraph 8(2) (a) of the applicant's replying affidavit.

SWORN TO at SALISBURY this 21st day of June, 1966.

(Sgd) T.A.I. Bosman

Before me,

(Sgd) G.A. Ade

Commissioner of Oaths.

In the General Division

No.61

Further Affidavit
of Thomas Arnold
Theron Bosman
Dated
21st June 1966
(Contd.)

10

In the General
Division
No.62

NO. 62
FURTHER AFFIDAVIT OF
NOEL HUGH BOTHA BRUCE

Further Affidavit
of Noel Hugh
Botha Bruce
Dated
17th June 1966

Case No.G.D.247/66

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superinten- Respondent
dent of the Gwelo Prison

FURTHER AFFIDAVIT OF NOEL HUGH BOTHA BRUCE

I, NOEL HUGH BOTHA BRUCE, do hereby
make oath and say that:-

1. Prior to my arrival in Rhodesia 20
I was in the employ of the South
African Reserve Bank for a period
of approximately 17 years.
I have in all had some 26 years'
experience of practical central
banking. I left my employment
in south Africa in the year 1955
to take up the position of Secretary,
in the Bank of Rhodesia and Nyasaland.
I am presently the Governor of the 30
Reserve Bank of Rhodesia, a
position which I have held since
May, 1965.
2. During my extended experience in
central banking, I have been

10 closely involved in studying and forecasting the effects on the economics of South Africa, the Federation of Rhodesia and Nyasaland and of Rhodesia of factors which affect and have an influence on the maintenance of the strength of the internal and external purchasing powers of the currencies of these countries, as well as on their economic growth. I have also been concerned in the formulation and application of monetary policies designed to counteract adverse factors and to create monetary climates conducive to sound economic development.

In the General
Division

No.62

Further Affidavit
of Noel Hugh
Botha Bruce
Dated
17th June 1966
(Contd.)

20 3. Having regard to my specialised experience as outlined above, I consider myself to be an expert in central banking (which, in itself, demands a considerable knowledge of and understanding of economics, a subject in which I have successfully completed five years of academic study, three of which were at university level), including more particularly the matters referred to above.

30 4. In regard to paragraph 3 of my earlier affidavit, the first sentence thereof relates to matters of fact which are within my own knowledge. The statement that "there is nothing to show that Rhodesia will not continue to survive them" I consider that I am well qualified to make by reason of my expert knowledge and by reason of secret and confidential information which it is clearly not
40 in the public interest to disclose and which cannot be known to either Professor Taylor or Mr. Curtin. I adhere to my view as expressed in paragraph 3 of my earlier affidavit.

50 5. In this affidavit I have confined

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NO. 63

FURTHER AFFIDAVIT OF CORNELIUS
EWEN MACLEAN GREENFIELD

In the General
Division

No.63

IN THE GENERAL DIVISION Case No.GD.247/66
OF THE HIGH COURT OF RHODESIA

Further Affidavit
of Cornelius
Ewen Maclean
Greenfield
Dated
20th June 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

FURTHER AFFIDAVIT OF CORNELIUS EWEN MACLEAN
GREENFIELD.

I, CORNELIUS EWEN MACLEAN GREENFIELD,
do hereby make oath and say that:-

20 1. I was employed in the Rhodesian
Treasury from the year 1929 until
my retirement in May, 1966. In
the last 12 years of this period
I held the post of Secretary to
the Treasury. I have been Chair-
man of the Economic Advisory
Committee since its inception in
November, 1965. As Secretary to
30 the Treasury it was my main
duty to guide the Government in
financial policy and financial
matters and to deal with the
administration and execution of
the Government's financial policy.
While I have no degree in Economics,
by reason of my extended previous

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Division

No.63

Further Affidavit
of Cornelius
Ewen Maclean
Greenfield
Dated
20th June 1966
(Contd.)

specialised experience I consider myself an expert in financial administration and well qualified to express the opinion which I did in paragraph 6 of my earlier affidavit. That opinion is in part based on secret and confidential information which it is not in the public interest to disclose and which cannot be known either to Professor Taylor or Mr. Curtin.

10

2. In this affidavit I have confined myself to setting out my qualifications, which enable me to testify as an expert, and the fact that I have not dealt with the various assertions made by Professor Taylor must not be taken as an admission that I am in agreement with the views expressed by him.

20

SWORN TO at SALISBURY this
20th day of June, 1966.

(Sgd) Cornelius Greenfield

BEFORE ME,

(Sgd) V. Barnes Pope
Commissioner of Oaths.

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NO. 63a

AFFIDAVIT OF JOHN WADE ROEBUCK

Case No. GD.247/66

In the General
Division

No.63a

Affidavit of
John Wade
Roebuck
Dated

17th June 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintend- Respondent
ent of the Gwelo Prison

AFFIDAVIT OF JOHN WADE ROEBUCK

I, JOHN WADE ROEBUCK, do hereby
make oath and say that:-

- 20 1. I am the District Commissioner for the
district of Chipinga.
2. I have been employed in the Southern
Rhodesian Department of Native
Affairs and, since its formation in
succession to that department, the
Department of Internal Affairs for
a period of approximately 20 years.
- 30 3. I have been stationed in the Chipinga
district since August, 1962, at
first as Assistant Native Commissioner,
then as Acting District Commissioner
from December, 1962, to November, 1963
and as District Commissioner from
November, 1963.
4. Throughout the period of approximately

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Division

No.63a

Affidavit of
John Wade
Roebuck
Dated
17th June 1966
(Contd.)

20 years referred to in paragraph 2 of this affidavit, I have, in the exercise of my official duties, worked closely and continually amongst the African population of this country. I consider that my experience amongst the African people of this country has given me sufficient knowledge and understanding of these people to enable me to speak with some accuracy and assurance about the matters discussed in this affidavit.

10

5. With particular reference to the Chipinga district, I have since my arrival in the district in August 1962, travelled extensively throughout the district in the course of my official duties and have come into contact with all sections of the African population of the district, both inside and outside the Tribal Trust Lands. I consider that my experience in this district has given me sufficient knowledge and understanding of the African people of the district to enable me accurately to assess their attitudes and reactions and to speak about the matters discussed in this affidavit.

20

6. The Chipinga district is approximately 1,950 square miles in extent and contains the Mutema, Musikavanhu, Tamandayi and Ndowoyo Tribal Trust Lands. The Tribal Trust Lands are approximately 1,130 square miles in extent. At the last census in 1962, the African population of the district was estimated at approximately 84,000 and since then, in my estimation, has increased to approximately 95,000. The great majority of the African population of the district consists of persons who are either uneducation or have only rudimentary education.

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7. I have been shown a copy of the affidavit of Charles Philip Blakney

in which he expressed the opinion that the great majority of the people in the Tribal Trust Lands in the Chipinga district are opposed to the present Government and the present state of national affairs.

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Division

No.63a

Affidavit of
John Wade
Roebuck
Dated
17th June 1966
(Contd.)

8. I do not agree that the great majority of the people in the Tribal Trust Lands in the Chipinga district are opposed to the present Government as such or the present state of national affairs as such. In the first place, it is my considered opinion based on the experience described above that the great majority of the African people living in the said Tribal Trust Lands did not and does not understand what happened when the unilateral declaration of independence of the 11th November, 1965 was made and that, as far as it is concerned, it is merely a case of the same Government continuing as before. If there is any opposition to the present Government I consider that that opposition has no real connexion as far as the great majority of the African population is concerned with the events of the 11th November, 1965, and the present state of national affairs. Such opposition is opposition to the Government because it happens to be the Government.
9. It is my experience that among the great majority of the Africans in the said Tribal Trust Lands Opposition to the Government means little more than that there is a measure of dissatisfaction over such matters as the shortage of land, the enforcement of modern farming methods, compulsory dipping, payment of dipping fees, payment of tax, etc.
10. The type of opposition described in the previous paragraph of this

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No.63a

Affidavit of
John Wade
Roebuck
Dated
17th June 1966
(Contd.)

affidavit has existed for some years now, quite independently of the opposition to the particular Government which happened to be in power at any one time. Thus, in 1962, when the Government of Sir Edgar Whitehead was in power, there was considerable unrest amongst the African population of the said Tribal Trust Lands which manifested itself in the burning of dip tanks and training centres, the erection of road blocks, cutting of telephone wires and similar acts calculated to hinder the work of those in authority. This type of incident continued in 1963 and 1964 but to a markedly lesser and ever diminishing extent. Through 1965 the position continued steadily to improve until at present the position is one of relative calm.

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11. It may well be correct to say that there is still some opposition to the Government in the sense described in paragraph 9 of this affidavit, but active expression of that opposition in the ways described in paragraph 10 of this affidavit has almost completely ceased and, in fact, there is now so satisfactory an attitude of co-operation with the Government amongst the vast majority of the African population in the Chipinga district that I am convinced that such opposition is now very limited.

30

12. At present and at all times since the 11th November, 1965, the African population of the Chipinga district as a whole regards and has regarded the present Government as the only Government of the country. There is a most satisfactory measure of conformity and obedience to the laws of the land and the requirements of the Government. In fact, the general situation and the attitude of the African people towards the Government and those in authority are now far

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better and more favourable than in 1962. In my judgment the making of the unilateral declaration of independence on the 11th November 1965, has had no noticeable effect amongst the vast majority of the African population of the district and, to the extent that there has been any real understanding of the significance of that declaration, there has been acceptance of and acquiescence in the fact that the present Government is the only and effective Government of the country.

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Affidavit of
John Wade
Roebuck
Dated
17th June 1966
(Contd.)

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13. In the affidavit referred to in paragraph 7 of this affidavit, Mr. Blakney refers to two unnamed chiefs in the Tribal Trust Lands in the Chipinga district who expressed unmixed opposition to the present Government's course of action. The said Tribal Trust Lands fall under my jurisdiction and I can say that there are therein seven chiefs recognised and subsidised as such by the Government and seven headmen recognised and subsidised as such by the Government (the latter might well be regarded as and called chiefs by Africans in the district). It may well be that there are, amongst these persons, some who do not like the Government and do not approve of or support everything that the Government does, but I can say that at a provincial assembly of chiefs held in Umtali on 18th November, 1965 (at which all the said chiefs and headmen were present) the chiefs and headmen of the province, including the said chiefs and headmen, expressed in my presence and hearing their support for the action of the Government in making the unilateral declaration of independence. There were approximately eighty chiefs and headmen present at this provincial assembly. Furthermore, since the 11th November, 1965, there has been in my district nothing in the behaviour of any of the said chiefs and headmen to indicate

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Affidavit of
John Wade
Roebuck
Dated
17th June 1966
(Contd.)

that the support for the Government expressed at the said provincial assembly was anything other than genuine. All the said chiefs and headmen have continued to carry out their functions and to comply with the laws of the land and the directions of myself and other officials. On no occasion has there been any refusal to comply with such laws and instructions on the ground that the Government is no longer the Government. On no occasion has there been any query as to the position of the Government. As far as I am able to judge the said chiefs and headmen accept the present Government as the only effective Government of the country and act accordingly.

10

14. In conclusion, I repeat that in my opinion the vast majority of the African population in the Chipinga district accepts and regards the present Government as the only effective Government of the country. In so far as there may amongst a small minority be any real understanding of the significance of the unilateral declaration of independence there appears to me to be an overwhelming acceptance of and acquiescence in the fact that the present Government is the only and effective Government of the country.

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SWORN at CHIPINGA this 17th day
of JUNE 1966.

(Sgd) J. Roebuck-

BEFORE ME,

(Sgd) (Signature indecipherable)

Commissioner of Oaths.

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NO. 64

AFFIDAVIT OF MARTIN ERNEST
HAYES

In the General
Division

No.64

Case No.G.D.247/66

Affidavit of
Martin Ernest
Hayes
Dated 22nd
June 1966

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

IN THE MATTER between:

STELLA MADZIMBAMUTO

Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

AFFIDAVIT OF MARTIN ERNEST HAYES

I, MARTIN ERNEST HAYES, do hereby
make oath and say that:-

- 20 1. I am the Provincial Commissioner for
the Province of Manicaland.
2. I was born in Marandellam in 1910 and
have lived in this country all my
life. I joined the Southern Rhodesia
Native Affairs Department in 1932 and
have served in that department and,
since its formation in succession
thereto, the Department of Internal
Affairs ever since. In that time I
30 have worked in most parts of Mashonaland,
some parts of the Midlands and
Manicaland; my present post, of course,
covers the whole of the Province of
Manicaland.

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No.64

Affidavit of
Martin Ernest
Hayes

Dated 22nd
June 1966
(Contd.)

3. I am fluent in Chishona, in both the spoken and written word, and indeed could speak the language as early as I could speak English, my home language. I acted as interpreter at the Domboshawa Indabas in 1964 and 1965.
4. Since joining the Native Affairs Department in 1932 I have at all times worked closely with all sections of the African population in those parts of the country specified in paragraph 2 of this affidavit and have come to know well their customs and way of life. 10
5. With particular refernce to the Province of Manicaland, with which this affidavit is principally concerned, I have held the post of Provincial Commissioner, Manicaland, since 1st February, 1965. Since that date I have regularly visited all districts in the province and have come into contact with all sections of the African population of the province both inside and outside the Tribal Trust Lands. 20
6. I consider that the long and extensive experience described in the preceding paragraphs has given me a deep knowledge and understanding of the African people and that I am well qualified to express the views and make the statements which follow. 30
7. I have been shown the affidavit of CHARLES PHILIP BLAKNEY. Ad paragraph 6 thereof, if Mr. Blakney has spoken to a representative cross-section of the African people living in the Tribal Trust Lands in the Chipinga District, I find it extremely difficult to believe his statement that he has not encountered one African who supports the present Government and its policies or who 40

approves of the present state of national affairs. In any event, I would not attribute much significance to the fact that Mr. Blakney has not encountered one such African, for from my long experience of the African, I can say that, generally speaking, the African in certain circumstances has a tendency to give a questioner the answer which he thinks will be most acceptable to the questioner. This would, in my opinion, apply in the case of a typical inhabitant of the Tribal Trust Lands in the Chipinga District when questioned by a person such as Mr. Blakney about his attitude towards the present Government and its policies and the state of national affairs. I have little doubt that most such Africans when questioned thus by a person such as Mr. Blakney would know what answers would be most acceptable to him and would reply accordingly.

8. In any event, I say that apart from a very small minority, what opposition there may be to the Government is not opposition to the present Government because it is the present Government or to the present state of national affairs as such (if by the latter expression is meant the existence of the sovereign state of Rhodesia, independent of the United Kingdom). In the first place, I consider that the vast majority of the African people living, not only in the Tribal Trust Lands in the Chipinga District, but also in the Tribal Trust Lands in the Province of Manicaland, did not and does not understand what happened when the declaration of independence of 11th November, 1965 was made. To them the same government as before is continuing to govern. In the second

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Affidavit of
Martin Ernest
Hayes

Dated 22nd

June 1966

(Contd.)

place what opposition there may be has no connection, as far as the vast majority of the said African people is concerned, with events of the 11th November, 1965, but is merely opposition to the Government because it happens to be the Government.

In other words, it is the same sort of opposition that has been fairly common for some years now, irrespective of the particular government which happened to be in power at the time.

I would add that throughout the Manicaland Province there is now a high degree of co-operation with the Government and the authorities and that the general picture is one of calm and compliance with the laws of the land and co-operation with the authorities.

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9. It is also my considered opinion that insofar as there has been among a very small number of Africans in the Manicaland Province any real understanding of the events of the 11th November, 1965, there has been acceptance of and acquiescence in the fact that the present Government is the only and effective government of the country.

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10. As far as the chiefs and headmen of the Manicaland Province are concerned, I can say that they have since the 11th November, 1965 continued to perform their functions and to comply with the laws of the land and the instructions of myself and other officials of the Department. There have been individual expressions of support for the Government in taking independence and satisfaction that the country could now be governed without interference from another government many thousands of miles away with no knowledge of the problems and needs of this

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country. Similar sentiments were expressed by many chiefs and headmen at a Provincial Assembly of the chiefs and headmen of the Province held in Umtali on the 18th November 1965. At this assembly there were present about eighty chiefs and headmen, the District Commissioners of all the districts in the Province, the Secretary for Internal Affairs and myself. The Secretary for Internal Affairs explained the implications of the declaration of independence of 11th November 1965. This was followed by discussion by the chiefs and headmen in the traditional manner, in which a consensus is reached by full discussion of the issues involved. No one was forced to speak and those who spoke appeared to me to do so willingly. Each chief and headman who spoke indicated his support for the action taken by the Government and no chief or headman adopted a different view. From the tone of voice used and taking all factors into account, it appeared to me that the feelings expressed were genuine. The consensus established by the assembly was that the chiefs and headmen supported the Government in the action it had taken.

11. Since this assembly, I have travelled extensively in the Province and I can say that there has been nothing in the behaviour or actions of any chief or headman to indicate that the views expressed at the assembly were anything but genuine. Indeed, the indications have been that the support expressed was quite genuine. This is illustrated by an incident, described in the next paragraph of this affidavit, connected with the recent visit to the Melsetter-Chipinga area of His Excellency the Officer Administering the

In the General
Division

No.64

Affidavit of
Martin Ernest
Hayes
Dated 22nd
June 1966
(Contd.)

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In the General
Division

No.64

Affidavit of
Martin Ernest
Hayes
Dated 22nd
June 1966
(Contd.)

Government, Mr. C.W. Dupont.

12. Among the Vandau people living in the Melsetter-Chipinga area, if a person finds a pangolin (or scaly ant-eater) it is regarded as a sign of good fortune sent from heaven to the people of the area. By tribal custome the finder of the pangolin must take the animal to the chief, who will then organise a ceremony to celebrate the good fortune. 10
Shortly before Mr. Dupont's visit to the area in the first week of June, 1966, a pangolin was found and, in accordance with the custom, taken to the chief who, quite unsolicited, asked me whether he could at a public ceremony present the pangolin to Mr. Dupont as a sign of the support of himself and his people and in order that Mr. Dupont might share in the good fortune heralded by the finding of the pangolin. 20

13. In conclusion, I consider that the vast majority of the African people in the Tribal Trust Lands in the Province of Manicaland are not opposed to the present Government and that the Government is overwhelmingly accepted and regarded as the only effective government of the country. 30

SWORN TO at SALISBURY this 22nd day of June, 1966.

(Signed) M. E. Mayes
.....

BEFORE ME,
(Signature indecipherable)
.....

(Stamped)
22nd June
1966 P.O.
Box 94.
Umtali,
Rhodesia.

District Commissioner.

205.

NO.65

NOTICE OF APPLICATION
TO STRIKE OUT

In the General
Division

No.65

IN THE GENERAL DIVISION
OF THE HIGH COURT OF RHODESIA

Case No.G.D.247/66

Notice of
Application to
Strike out
Dated
31st May 1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superin- Respondent
tendent of the Gwelo Prison

NOTICE OF APPLICATION TO STRIKE OUT

20 BE PLEASED to take notice that at
the hearing of the above application, at
the same time as presenting argument on
the merits, the Applicant will apply
for the following portions of the
opposing affidavits filed by the
Respondents to be struck out on the grounds
stated:-

A. On the ground that the allegations
contained therein are irrelevant:-

- 30 1. First Respondent's Affidavit -
the second sentence of
paragraph 2, paragraphs 8 and
9.
2. Affidavit of C.W. Dupont -
paragraphs 2 to 13 inclusive.

In the General
Division

No.65

Notice of
Application to
Strike out
Dated
31st May 1966
(Contd.)

3. The entire affidavits of all the deponents other than the Respondents and C.W. Dupont.

B. On the ground that the allegations contained therein are hearsay or based on hearsay:-

1. First Respondent's Affidavit

(a) The second sentence of paragraph 2;

(b) In paragraph 8 from the words "by virtue of the fact" to the end of the paragraph;

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(c) In paragraph 9 the second sentence and sub-paragraphs (a) and (b).

2. Affidavit of C.W. Dupont

(a) Paragraph 4;

(b) Paragraph 5;

(c) In paragraph 6 the allegation that certain laws which the British Government has purported to make are not observed here;

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(d) Paragraph 7;

(e) Paragraph 8;

(f) The second sentence of paragraph 9;

(g) Paragraph 13.

3. Affidavit of F.E. Barfoot

(a) Paragraph 3, in so far, if at all, it is intended to cover instructions given by persons other than the deponent himself or absence of objection conveyed

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to persons other than the deponent himself;

In the General
Division

No. 65

(b) Paragraph 4, except the allegation that the deponent himself continues to obey directives;

Notice of
Application to
Strike out
Dated
31st May 1966.
(Contd.)

(c) In paragraph 5 from the words "and, from information" to the end of the paragraph;

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(d) In paragraph 6 from the words "and I am satisfied" to the end of the paragraph;

(e) Paragraph 7;

(f) Paragraph 8.

4. Affidavit of Chief Zwimba

Paragraphs 2 to 4 inclusive.

5. Affidavit of S.E. Morris

Paragraphs 2 to 8 inclusive.

6. Affidavit of C.S. Davies

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Paragraph 5.

7. Affidavit of E. Espach

(a) Paragraphs 4 and 5;

(b) The second sentence of paragraph 6.

8. Affidavit of D.H. Cummings

Paragraph 5.

9. Affidavit of E.C.W. Trollip

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(a) In paragraph 2 the words "and the civilian personnel of the Ministry and the commanders and personnel of the Army and Air Force of Rhodesia" and the

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In the General
Division

No.65

Notice of
Application to
Strike out
Dated
31st May 1966
(Contd.)

words "which instructions
are accepted without any
question as to the authority
of the aforesaid Government";

(b) Paragraphs 4 and 5;

(c) The second sentence of para-
graph 6.

10. Affidavit of J.A.C. Houlton

(a) Paragraph 5;

(b) The second sentence of para-
graph 6.

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11. Affidavit of N.R. Heathcote

(a) Paragraph 5;

(b) The second sentence of para-
graph 6.

12. Affidavit of L.C. Ross

(a) Paragraphs 4 and 5;

(b) The second sentence of para-
graph 6.

13. Affidavit of W.H.H. Nicolle

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(a) Paragraphs 4 and 5;

(b) The second sentence of
paragraph 6.

14. Affidavit of N.F. Grant

(a) Paragraphs 4 and 5;

(b) The second sentence of para-
graph 6.

15. Affidavit of J. Armstrong

(a) Paragraphs 4 and 5;

(b) The second sentence of para-
graph 6.

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16. Affidavit of A.M. Bruce-Brand
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
17. Affidavit of E.G.G. Marsh
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
18. Affidavit of K.K. Parker
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
19. Affidavit of C.R. Dickenson
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
20. Affidavit of G.B. Clarke
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
21. Affidavit of G.H. Bradbury
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.
22. Affidavit of D.W. Young
 - (a) Paragraphs 4 and 5;
 - (b) The second sentence of paragraph 6.

In the General
Division

No.65

Notice of
Application to
Strike out
Dated
31st May 1966
(Contd.)

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In the General
Division

No.65

Notice of
Application to
Strike out
Dated
31st May 1966
(Contd.)

23. Affidavit of H.W.H. Wallis

(a) Paragraphs 4 and 5;

(b) The second sentence of paragraph 6.

24. Affidavit of N.H.B. Bruce

In paragraph 3 from the words
"and I can say" to the end of the
paragraph.

25. Affidavit of C.E.M. Greenfield

Paragraphs 5 and 6.

C. On the ground that the allegations are opinions, which opinions are irrelevant: 10

1. First Respondent's Affidavit

(a) In paragraph 8 the allegation that the measures referred to "are measures taken by the only effective legislature and Government of Rhodesia as being necessary for the preservation of peace and the maintenance of order in Rhodesia and for the good government thereof", which allegation is as to the opinion of the alleged legislature and the alleged government; 20

(b) The first two sentences of paragraph 9.

2. The affidavit of C.W. Dupont

(a) The second sentence of paragraph 9; 30

(b) Paragraph 13.

3. Affidavit of T.A.T. Bosman

The first sentence of paragraph 3.

4. Affidavit of F.E. Barfoot

- (a) In paragraph 5 from the words "and, from information" to the end of the paragraph;
- (b) In paragraph 6 from the words "and I am satisfied" to the end of the paragraph;
- (c) The first sentence of paragraph 7.

In the General
Division

No.65

Notice of
Application to
Strike out
Dated
31st May 1966
(Contd.)

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5. Affidavit of Chief Zwimba

The second sentence of paragraph 4.

6. Affidavit of S.E. Morris

- (a) The third sentence of paragraph 5;
- (b) In paragraph 6 from the words "and of the resignations" to the end of the paragraph;
- (c) Paragraph 7.

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7. Affidavit of D. Espach

- (a) Paragraph 4;
- (b) The second sentence of paragraph 6.

8. Affidavit of D.H. Cummings

The second sentence of paragraph 6.

9. Affidavit of E.C.W. Trollip

- (a) Paragraph 4;
- (b) The second sentence of paragraph 6.

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10. Affidavit of J.A.C. Houlton

- (a) Paragraph 4;
- (b) The second sentence of paragraph 6.

In the General
Division

No.65

Notice of
Application to
Strike out
dated
31st May 1966
(Contd.)

11. Affidavit of N.R. Heathcote
 - (a) Paragraph 4;
 - (b) The second sentence of paragraph 6.
12. Affidavit of M.H. Webster
 - (a) Paragraph 5;
 - (b) The second sentence of paragraph 6.
13. Affidavit of L.C. Ross
 - (a) Paragraph 4; 10
 - (b) The second sentence of paragraph 6.
14. Affidavit of W.H.H.Nicolle
 - (a) Paragraph 4;
 - (b) The second sentence of paragraph 6.
15. Affidavit of N.F. Grant
 - (a) Paragraph 4;
 - (b) The second sentence of paragraph 6. 20
16. Affidavit of J. Armstrong
 - (a) Paragraph 4;
 - (b) The second sentence of paragraph 6.
17. Affidavit of A.M. Bruce-Brand
 - (a) Paragraph 4;
 - (b) The second sentence of paragraph 6.

18. Affidavit of E.G.G. Marsh
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
19. Affidavit of K.K. Parker
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
20. Affidavit of C.R. Dickenson
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
21. Affidavit of G.B. Clarke
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
22. Affidavit of G.H. Bradbury
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
23. Affidavit of D.W. Young
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.
24. Affidavit of H.W.H. Wallis
 (a) Paragraph 4;
 (b) The second sentence of paragraph 6.

In the General
 Division

No.65

Notice of
 Application to
 Strike out
 dated
 31st May 1966
 (Contd.)

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In the General
Division

No.65

Notice of
Application to
Strike out
dated
31st May 1966
(Contd.)

25. Affidavit of N.H.B. Bruce

Paragraph 3, in that the allegations are the expressions of the deponent's opinions, and even if he is an expert, of which there is no evidence, the facts on which such opinions are based and the reasons for holding such opinions are not stated.

26. Affidavit of C.E.N. Greenfield

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Paragraphs 5 and 6, in that the allegations are the expressions of the deponent's opinions, and even if he is an expert, of which there is no evidence, the facts on which such opinions are based and the reasons for holding such opinions are not stated.

DATED at SALISBURY this 31st day
of May 1966.

20

(Sgd) Anthony Jaffey
SCANLEN & HOLDERNESS,
Applicant's Attorneys,
Barclays Bank Building,
Manica Road, Salisbury.

To: The Registrar of the General
Division of the High Court,
Salisbury.

And to: The Government Attorney,
Respondents' Attorney,
Lonrho House,
Union Avenue,
Salisbury.

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215.

NO. 67

APPELLANT'S NOTICE OF
APPEAL

In the Appellate
Division

No.67

IN THE APPELLATE DIVISION
OF THE HIGH COURT OF SOUTHERN RHODESIA

Appellant's
Notice of Appeal
Dated
23rd September
1966

IN THE MATTER between:

STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and of Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superin- Respondent
tendent of the Gwelo Prison

APPELLANT'S NOTICE OF APPEAL

20 TAKE NOTICE that the Appellant hereby
appeals against the judgments given by the
Honourable Mr. Justice Lewis and by the
Honourable Mr. Justice Goldin in the General
Division of the High Court on 9th September,
1966, dismissing the Appellant's application
for an order for the release forthwith of
her husband from detention and for costs,
on the grounds that:-

- 30 (1) The learned Judges erred in
recognising what is referred to in
the judgments as "the Government of
this country" as being the de facto
government of this country and/or
as being the government in effect-
ive control of this country.
- (2) Even if the learned Judges did not
err in recognising the said govern-
ment as the de facto government

In the Appellate
Division

No.67

Appellant's
Notice of Appeal
Dated
23rd September
1966
(Contd.)

of this country and/or as being in effective control of this country, they erred in holding that they could recognise or give effect to certain of the legislative and administrative acts of the said government and of the Parliament of Rhodesia.

- (3) Even if the learned Judges did not err in holding that they could recognise or give effect to certain of the said legislative and administrative acts, they erred in holding that they could recognise or give effect to the following acts:-
- (a) the proclamation of a state of emergency by Clifford Walter Dupont on 4th February, 1966 (Proclamation No.3 of 1966, published in Government Notice No.57 of 1966). 10
- (b) the making of the Emergency Powers (Maintenance of Law and Order) Regulations, 1966 (published in Government Notice No. 71 of 1966). 20
- (c) the continued detention of the Appellant's husband in terms of such Regulations. 30

The relief which is sought by the Appellant is an order setting aside the orders made by the said judgments and ordering:-

1. That the Appellant's husband be released forthwith from detention.
2. That the Respondents pay the costs of these proceedings, both on appeal and in the Court a quo. 40

DATED at SALISBURY this 23rd day of September 1966.

(Signed) Anthony Jaffey

SCANLEN & HOLDERNESS,
Appellant's Attorneys,
Third Floor,
Barclays Bank Building,
Manica Road,
Salisbury.

In the Appellate
Division

No.67

Appellant's
Notice of Appeal
Dated
23rd September
1966
(Contd.)

(which is the Appellant's address
for service)

10 To: The Registrar of the Appellate Division
of the High Court, Salisbury.

And to: The Registrar of the General
Division of the High Court,
Salisbury.

And to: The Government Attorney,
9th Floor.
Lomb House,
Union Avenue,
Salisbury.

20 (First and Second Respondents'
Attorney).

In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument.

NO.68

POINTS ON WHICH COURT
WOULD LIKE TO HEAR
FURTHER ARGUMENT

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

IN THE MATTER between:

(1) STELLA MADZIMBAMUTO, Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE First 10
in his capacity as Minister of Respondent
Justice and Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent of Respondent
Gwelo Prison

- and -

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE First 20
in his capacity as the Officer Respondent
in Charge of Quo Que Prison

- and -

HENDRIK STEPHANUS BEZUIDENHOUT Second
in his capacity as Director of Respondent
Prisons

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth 30
alternatively Respondent
DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of Fifth
Justice and of Law and Order Respondent

POINTS ON WHICH COURT WOULD LIKE TO HEAR
FURTHER ARGUMENT

In the Appellate
Division

No.68

In argument this Court was referred exclusively to Grotius and other Continental jurists as authorities on the question of allegiance. There are reasons which suggest that it is to the English law this Court must look for guidance and the following questions are put to counsel for their consideration:-

Points on which
Court would
like to hear
further
argument

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A. Is the law of allegiance in Rhodesia English law or Roman Dutch law? That English law should be followed may be indicated by the following considerations:

(a) Allegiance is of necessity inseparably linked with the question of sovereign power.

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(b) The constitutional system in Rhodesia is based on the English system and it is to English constitutional law that this Court normally looks in determining constitutional issues.

(c) The law of allegiance is an integral part of constitutional law.

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(d) Prior to the 11th November, 1965, sovereign power in and over Rhodesia was divided between Rhodesia and Britain. The exact division may be a matter of dispute but it would seem that prior to the 11th November, 1965; the allegiance of persons resident in Rhodesia would not be owed exclusively either to the sovereign in right of Britain, that is, to the British Government, or to the sovereign in right of Rhodesia, that is, to the Rhodesian Government. Since there was in effect a diarchical form of government it would seem probable

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In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument
(Contd.)

that the law of allegiance was
and always has been the English
law. Rhodesia's constitutional
development would appear to lend
support to this view.

- (e) Statutory provision in Rhodesia
would also seem to indicate that
the principles of English law
apply in determining the question
of allegiance: 10
- (i) the form of the oath of
allegiance prior to the 11th
November, 1965;
- (ii) the definition of "sovereign"
in the Interpretation Act.
- (f) The oath of allegiance in Rhodesia
was in precisely the same form
as the oath of allegiance in
England and appears to have 20
been based on the views expressed
by Hale on the scope of the
Treason Act, 1351. See Hale's Pleas
of the Crown, Vol. 1.
- (g) The definition of "sovereign"
in Rhodesia follows the
definition in the English
Interpretation Act. "Sovereign"
is not defined in the words
used in the oath of allegiance
and this is of significance. 30
The formula "for the time being
is the formula used in the Act
passed by Henry VII in 1495 (11
Hen. 7. c.1). This Act is still
part of English law. The
Rhodesian definition of "sovereign"
indicates an express intention
to base our law of allegiance
upon the concept of allegiance
in English constitutional law. 40

These are some of the reasons why
counsel may consider that in determining
the question of allegiance regard must be

had to the English law and not to the views of Grotius and other Continental jurists.

In the Appellate
Division

No.68

B. If the principles of English law apply it will be necessary for counsel to consider what these principles are. The following points and references may be of assistance:

Points on which
Court would
like to hear
further
argument
(Contd.)

- 10 (a) The fundamental concept of the English law of allegiance would appear to be that obedience and service are owed to a sovereign power in return for protection.
- 20 (b) Because allegiance would appear to be based upon the fact of protection and not upon the legal right to give such protection, allegiance is owed not only to a de jure sovereign power which is also the de facto sovereign power but also to a de facto sovereign power which is not the de jure sovereign power. That this is the English common law would appear from the following authorities:
- 30 (i) English Commentators:
Bacon's Abridgement Prerogative A; Coke (3 Coke's Institutes 7); Hawkins (1 Hawk. P.C. 36); Hale (1 Hal. P.C. 60 and 104); Blackstone (Vol. 4, 15th Edn. at p. 76 et seq.); Halsbury's Laws of England, Vol. 7, 3rd Edn. at p. 208 et seq., in particular, paras, 436 and 450; see also the earlier editions of this work.
- 40 (ii) The Act of Henry VII (11 Hen. 7.c.1) which would appear to be confirmatory of the common law that allegiance is due to a de

In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument
(Contd.)

facto sovereign power.
See, for instance, the remarks
of Hood Phillips (Constitutional
Law, p. 528).

- (c) Because allegiance is owed to a de facto sovereign power it would appear that under the English law not only is it not treason to obey and serve such a power but on the contrary, the position is that a de facto sovereign power is protected in its duty of governing by the laws of treason. (Halsbury, Vol. 10, 3rd Edn. paras. 1025 and 1026).

10

C. If the question of allegiance in Rhodesia is to be determined by the principles of English law it will be of importance for counsel to determine the precise nature of the allegiance owed by persons resident in Rhodesia prior to the 11th November, 1965, and then to consider the extent to which allegiance has been altered by the Declaration of Independence on that date.

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In considering the precise nature of allegiance it will be necessary to consider inter alia the landmarks in the development of the law on this subject, in particular, Calvin's case, 77 E.R. 377, the remarks at p.399 would appear to be particularly germane; Isaacson v. Durant 17 Q.B.D. 54 at 65. It would appear that allegiance is owed to a sovereign not in his personal capacity but in his political capacity and it is for this reason that allegiance is owed not to a lawful government out of possession and affording no protection but to a de facto government in possession and actually affording protection. Counsel will have to consider whether the English law is not correctly stated by Lord Russell when he said in Carrick v. Hancock 12 T.L.R. 59 that "all persons within any territorial dominion owe their allegiance to its sovereign power and obedience to all its laws and to the lawful jurisdiction of its

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courts." Compare the definition given by Salmond (Jurisprudence, 7th Edn., p. 150). In the context of English law Lord Russell's words would appear to refer to the laws of a de facto sovereign power as well as to the laws of a de jure sovereign power.

In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument
(Contd.)

10 Where, as in the case of Rhodesia before the 11th November, 1965, sovereign power is divided between two entirely different and separate governments to what governments is allegiance owed or, to put the matter from a different point of view, against what governments can the crime of treason be committed?

20 It would seem that under the English law allegiance is based upon reality - that is, upon the political facts as they exist for the time being. Counsel will have to consider whether prior to the 11th November, 1965, allegiance was owed to the Rhodesian Government as the sovereign internal power. That such allegiance was owed would appear to be indicated by the decision in Rex v. Maclane 26 St. Tr. 721 and many cases since that time. To put the matter in its technical form, treason in Rhodesia, it would appear, might be committed against the sovereign in right of Rhodesia just as in Maclane's case it was committed against the sovereign in right of Canada.

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D. If allegiance was owed to the Rhodesian Government as the sovereign internal power, was such allegiance destroyed by the Declaration of Independence? This would appear to involve two questions:

- (i) Is the existing government the de facto government?
- 40 (ii) Is a de facto government in Rhodesia with at least internal sovereign power entitled to the allegiance of persons resident in Rhodesia?

In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument
(Contd.)

What in this context is meant by a de facto government? In answering this question must this Court turn to the principles of international law or is this a domestic question to be determined by the principles of jurisprudence? Does a government only become a de facto government within the meaning of English law if it is permanently established or is it sufficient that such a government may have a temporary existence only? On these questions the views of the English commentators mentioned above and of English jurists such as Austin may be of assistance. See Austin's Jurisprudence, 5th Edn., p.326 et seq.

10

E. If allegiance is owed to the existing Rhodesian Government as a de facto government it would appear that conflict must necessarily arise between that allegiance and the allegiance owed to the British Government. On this aspect the principles of the English Conflict of Laws may be of assistance. Schmitthof in the 3rd Edition of the English Conflict of Laws states the position as follows:-

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"In the conflict between territoriality and allegiance, however, territoriality is regarded, by the English conflict of laws, as the superior principle."

Counsel are asked to consider whether allegiance owed territorially to a de facto government in Rhodesia would prevail over allegiance owed extraterritorially to the British Government.

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F. It will be necessary for counsel to consider the correct role of judges under an English constitutional system when, as has not infrequently happened in English history, revolutions have occurred. On this aspect, as well as on most of the constitutional questions raised above, the works of Sir William Holdsworth, A History of English Law (16 Volumes) will be found to contain valuable information. It will not be possible to refer to all of

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the relevant passages and it will be necessary for counsel to study the complete works for themselves. On the role of judges in a revolutionary situation reference may, with advantage, be made to Vol. 1, 3rd Edn., pp. 428 to 434, Vol. 2, 3rd Edn., pp. 559 and 560, Vol. 6, pp. 191 to 194 and p. 230 and Vol. 13, p. 11. The indications seem to be that the conduct of judges in a revolutionary situation in England has been profoundly influenced by the allegiance due to a de facto sovereign power and that the usual although not invariable practice has been for the judges to adopt an entirely neutral role.

In the Appellate
Division

No. 68

Points on which
Court would
like to hear
further
argument
(Contd.)

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Counsel are asked to consider the decisions in the American courts on the effect of the Declaration of Independence on the 4th July, 1776, on the question of the allegiance of persons living in the Colony on that date and to decide whether these decisions are in accordance with the principles of English law. See Respublica v. Chapman 4 Law. Ed. 33, Ware v. Hylton 1 Law. Ed. 568 to 579, M'Ilvaine v. Cox's Lessee 2 Law. Ed. 598, The Pizarro 4 Law. Ed. 226, Inglis v. The Trustees of the Sailor's Snug Harbor 7 Law. Ed. 617 and the earlier cases cited in the course of the judgments in this case.

40

G. Sir William Holdsworth in the course of his survey of English legal history makes frequent reference to the differences between constitutional development in England and constitutional development on the Continent. He also indicates, as does Stephen (History of the Criminal Law, Vol. 2, p. 285), the difference between the Continental concept of the relationship between sovereign and State and the English concept of this relationship. In the light of these differences counsel might wish to consider how far Grotius' views on allegiance are relevant to the problem before this court. In this connection it may be of importance to consider how far the views of Barclay referred to by Grotius (De Jure

In the Appellate Division

 No.68

Belli ac Pacis 1. 4. 10 and 11) correctly reflect the English law and whether the submission of the dispute between Rhodesia and Britain to the United Nations was an abdication of external sovereign power.

Points on which
 Court would
 like to hear
 further
 argument
 (Contd.)

Counsel are invited to present written argument on these points raised.

2.

The Court feels it may have to make a finding as to whether the court a quo was right in holding that the present government was not a lawful government and the 1965 Constitution not a lawful constitution. Counsel are invited to submit written argument on this point should they wish to do so.

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3.

Should the Court come to the conclusion that there is insufficient evidence before it on which to determine whether or not the detention orders were lawfully made, the question may arise as to whether or not the respondents should be given an opportunity of placing further information confidentially before the judges of the court only. Counsel are invited to present written argument on whether or not the respondents should be afforded such an opportunity of laying information before the Court if the contingency arises. (See Faber v. Barrow 1963 (1) S.A. 442 (S.R.) at p.429).

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4.

The first respondent (in the first appeal) stated that the detention orders under which the detainees are detained were subsequently continued in force by virtue of section 47 of the Emergency Powers (Maintenance of Law and Order) Regulations, 1966. The question whether or not section 47 is inter vires the Emergency Powers Act may arise for consideration. Counsel are invited, should they so wish, to present written argument on -

30

40

- (a) whether or not section 47 is inter vires the Act, and
- (b) if it is not, whether the point of its being ultra vires can be taken at this stage, and
- (c) if it is ultra vires and cognisance of it may have to be taken at this stage what effect this has on the applications, in particular does it appear from the papers before the Court that the first respondent addressed his mind at the relevant time to the need for their continued detention.

In the Appellate
Division

No.68

Points on which
Court would
like to hear
further
argument
(Contd.)

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Should Counsel consider that the points raised cannot be dealt with adequately by written argument, the Court will consider a request to reconvene the Court and hear further oral argument.

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In the Appellate
Division

No.69

Application for
leave to file
Additional
Affidavit
Dated
26th September
1967

NO. 69

APPLICATION FOR LEAVE TO FILE
ADDITIONAL AFFIDAVIT

IN THE APPELLATE DIVISION OF THE
HIGH COURT OF RHODESIA

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE First Respondent
in his capacity as Minister of
Justice and Law and Order 10

- and -

FREDERICK PHILLIP GEORGE Second Respondent
in his capacity as Superintendent
of Gwelo Prison

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE First Respondent
in his capacity as the Officer in
Charge of Que Que Prison 20

- and -

HENDRIK STEPHANUS BEZUIDENHOUT Second Respondent
in his capacity as Director of
Prisons

- and -

CLIFFORD WALTER DUPONT Third Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth Respondent
alternatively
DESMOND WILLIAM LARDNER-BURKE Fifth Respondent
in his capacity as Minister of
Justice and of Law and Order 30

APPLICATION FOR LEAVE TO FILE ADDITIONAL
AFFIDAVIT

In the Appellate
Division

No.69

TAKE NOTICE that the Respondents in
the above mentioned matters intend to
make application to the Appellate
Division on the 9th day of October, 1967
for leave to file the attached affidavit.

Application for
leave to file
Additional
Affidavit
Dated
26th September
1967
(Contd.)

DATED at SALISBURY this 26th day
of September, 1967.

10

(Sgd) ?

Government Attorney,
Respondents' Attorney,
Lonrho House, Union Avenue,
Salisbury.

To: The Registrar of the Appellate
Division of the High Court.

And to: Messrs. Scanlen and Holderness,
Appellants' Attorneys,
3rd Floor Barclays Bank Buildings,
Manica Road,
Salisbury.

20

AFFIDAVITIn the Appellate
DivisionNo.70I, DAVID WATSON YOUNG, hereby make
oath and say:-Affidavit of
David Watson
Young
Dated
26th September
1967
(Contd.)

10

1. I am the Secretary to the Treasury, a post I have held since the 7th May 1966. Prior to that date I had acted as Secretary to the Treasury with effect from the 18th November, 1965, after being Deputy Secretary with effect from the 1st April, 1965. I hold an Honours degree in mathematics and economics from St. Andrews University in Scotland. I have been employed in the Rhodesian Treasury and, prior to that, in the Federal and Southern Rhodesia Treasuries for a period of twenty years, in which time I have gained considerable practical experience of economic and financial matters.

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2. By reason of my academic qualifications and my specialised experience, I consider myself an expert in financial and economic matters and well qualified to express the opinions which are set out below.

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3. The Treasury is responsible for the well-being of the economy of Rhodesia and, since the declaration of independence on the 11th November, 1965 the overcoming of the economic and financial sanctions directed against this country has been the first priority in fulfilling that responsibility.

40

4. In the exercise of my functions as Secretary to the Treasury, I have access to information relevant to the effect of the said economic and financial sanctions and the success of the measures taken to overcome the said sanctions, both from Government sources and from non-Government sources, more particularly from sources in commerce and industry.

In the Appellate
Division

No.70

Affidavit of
David Watson
Young
Dated
26th September
1967
(Contd.)

This information includes much that is of a confidential and secret nature.

5. Since the declaration of independence on the 11th November, 1965, the Government of the United Kingdom and other Governments and, latterly, the Security Council of the United Nations Organisation and certain member States of that Organisation have applied or attempted to apply economic and financial sanctions against Rhodesia in a purported endeavour to "put an end to the revolution". 10
6. These measures, including the imposition of so-called "mandatory sanctions" by the said Security Council by Resolution No. 232 (1966) of the 16th December, 1966, have taken the broad forms of - 20
 - (a) attempting to prohibit and prevent the importation of certain goods into Rhodesia, including petroleum and petroleum products, arms and ammunition, military aircraft and vehicles, equipment and materials for the manufacture and maintenance of arms and ammunition in Rhodesia, non-military motor vehicles and aircraft, and equipment and materials for the manufacture, assembly and maintenance of such aircraft or motor vehicles in Rhodesia; 30
 - (b) attempting to prohibit and prevent the export from Rhodesia of certain goods originating in Rhodesia, including asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather; 40

- (c) attempting to prevent the rendering of financial or other economic aid to the Government of Rhodesia by other States;
- (d) the freezing or attempted freezing of Rhodesian financial assets overseas and the exclusion of Rhodesia from the sterling area and the attempted prevention and disruption of foreign exchange transactions between Rhodesia and other countries.

In the Appellate
Division

No.70

Affidavit of
David Watson
Young
Dated
26th September
1967
(Contd.)

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7. The effects of the measures taken have been met by appropriate action taken both by Ministries of the Rhodesian Government and by persons and organisations in the private sector of the Rhodesian economy. In the national interest I am unable to give details of the matters with which I am about to deal but I state in regard to the matters mentioned in sub-paragraphs (a) and (b) of the previous paragraph that, notwithstanding the taking of the measures there mentioned, Rhodesia has been able to import adequate supplies of all the goods listed in the said sub-paragraph (a), including goods originating in the United Kingdom. As far as exports are concerned, Rhodesia has been able to export sufficient quantities of goods to pay for all her imports. In fact, for the year 1966 there was a surplus of £1,500,000 in the balance of payments current account. In the first eight months of 1967 it has been possible to sustain a level of imports some 20% higher than in the corresponding period of last year and from all the information available to me I am able to say that this trend is continuing. This increase in imports has been made possible by the attainment of a level of exports adequate

In the Appellate
Division

No.70

Affidavit of
David Watson
Young
Dated
26th September
1967
(Contd.)

to ensure the provision of the foreign
exchange necessary to meet the
cost of imports.

- 8. In regard to the matters referred to
in sub-paragraph (c) of paragraph 6 above,
such financial or other economic aid
to the Government of Rhodesia from
other States as has ceased since the
declaration of independence is of
negligible significance economically. 10
In the national interest I cannot
reveal the amounts involved but I am
able to state that foreign investment
within Rhodesia has certainly not
ceased.

In regard to the matters mentioned in
sub-paragraph (d) of paragraph 6 above,
foreign exchange transactions between
Rhodesia and other countries have
certainly not been prevented by the 20
measures adopted, as will be apparent
from the fact that Rhodesia continues
to export and import goods in
increasing quantities.

- 9. The measures taken against Rhodesia
have failed to cripple or destroy
the economy of Rhodesia. On the
contrary there has been an upsurge in
industrial development, particularly 30
in the production of items formerly
imported from other countries; the
gross national product for 1966 amounted
to £358,000,000 which was 1.9% lower
than in 1965, an exceptionally
prosperous year, but still 6% higher
than in 1964; the present assessment
is that the gross national product
during 1967 will be higher than in
1966 and may possibly exceed the record 40
1965 figure; so far in 1967 the
volume of industrial production has
been higher by an average of 5%
or more than in the corresponding
months last year and the volume
of retail trade has on an average
been higher by 10% and of wholesale

trade by 22% in each month than in the corresponding months last year; the value of building plans approved in the main centres during the first six months of 1967 was almost double the 1966 figure for the same period and, in fact, exceeded the totals for the entire calendar years of 1963 and 1964.

- 10 10. Rhodesia has therefore successfully survived all the economic measures which have been applied against her and there is every indication that Rhodesia will continue to survive these measures and that the present economic expansion and development will continue.

SWORN TO at SALISBURY this 26th day of September, 1967.

20 (Sgd) D.W. Young

BEFORE ME,

(Sgd) V. Barnes-Pope
Commissioner of Oaths

In the Appellate
Division

No.70

Affidavit of
David Watson

Young

Dated

26th September

1967

(Contd.)

In the Appellate
Division of the
High Court of
Southern Rhodesia

NO.71

APPLICATION FOR LEAVE TO
FILE ADDITIONAL AFFIDAVITS

No. 71

Application for
Leave to file
Additional
Affidavits
Dated 3rd
October 1967

IN THE APPELLATE DIVISION OF THE
HIGH COURT OF RHODESIA

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superintendent Respondent
of Gwelo Prison

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE First
in his capacity as the Officer in Respondent
Charge of Que Que Prison

- and -

HENDRIK STEPHANUS BEZUIDENHOUT Second
in his capacity as Director of Respondent
Prisons

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE Fifth
in his capacity as Minister of Respondent
Justice and of Law and Order

APPLICATION FOR LEAVE TO FILE FURTHER
ADDITIONAL AFFIDAVITS

TAKE NOTICE that the Respondents
in the above mentioned matters intend to
make application to the Appellate Division
on the 9th day of October, 1967, for leave
to file the attached affidavits.

DATED at SALISBURY this 3rd day
of October, 1967.

10

(Sgd) ?

Government Attorney,
Respondents' Attorney,
Lonrho House,
Union Avenue, Salisbury.

To: The Registrar of the Appellate Division
of the High Court.

And to: Messrs. Scanlen and Holderness,
Appellants' Attorneys,
3rd Floor,
Barclays Bank Buildings,
Manica Road,
Salisbury.

20

In the Appellate
Division of the
High Court of
Southern Rhodesia

No. 71

Application for
Leave to file
Additional
Affidavits
Dated 3rd
October 1967
(Contd.)

AFFIDAVIT

In the Appellate
Division of the
High Court of
Southern Rhodesia

I, DESMOND WILLIAM LARDNER-BURKE,
hereby make oath and say:-

No. 72

Affidavit of
Desmond William
Lardner-Burke
Dated
3rd October 1967
(Contd.)

1. I am the Minister of Justice and of Law and Order and am the First and Fifth Respondent in the above mentioned matters.
- 10 2. I am able to state of my own knowledge and I do state that the Government of the Republic of South Africa recently requested permission from the present Government of Rhodesia for units of the South African Police to enter this country in order to take part in the exercises of our own Security Forces in combating the incursion of terrorists from countries to the north, in order to prevent the entry of any
20 such terrorists into the Republic. The Government agreed to this request and, as is now public knowledge, members of the South African Police are presently in this country for this purpose with the leave of the Government of Rhodesia.
- 30 3. I state the outcome of the action attempted by Great Britain to cause the downfall of the present Rhodesian Government, namely the imposition of sanctions, has not succeeded and is no longer uncertain. That it has not succeeded was publicly acknowledged by the Prime Minister of Great Britain only last week.
- 40 4. I state further that Governments of other States, in their dealings with Rhodesia, have accepted the fact that the present Government of Rhodesia is the only effective government of the country and in this regard I refer to paragraph 2 hereof and to the affidavit of the Secretary for Transport and Power.

SWORN TO at SALISBURY this 3rd day of October 1967.

D.W. Lardner-Burke
BEFORE ME, (Sgd) ?
Commissioner of Oaths.

AFFIDAVIT

In the Appellate
Division of the
High Court of
Rhodesia

I, ARTHUR LESLIE, hereby make
oath and say:-

No.73

Affidavit of
Arthur Leslie
Dated 3rd
October 1967
(Contd.)

1. I am the Secretary for Transport and Power.
2. The operation of the unitary railway system which exists as a body corporate for Rhodesia and Zambia by virtue of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, has been terminated by agreement between the Zambian Government and the Rhodesian Government.
3. Discussions to this end, in which I have taken part, have been going on for some six months through officials representing the Zambian Government and the Rhodesian Government respectively.
4. These discussions were held at meetings in Salisbury and Lusaka between officials representing the Rhodesian Government, including myself and a representative of the Treasury and a representative of the Attorney General's office, and officials representing the Zambian Government, including the Permanent Secretary to the Ministry of Transport, Power and Communications, the Permanent Secretary to the Ministry of Finance and the Permanent Secretary to the Ministry of Legal Affairs.
5. These discussions resulted in the establishment of two separate railway systems in place of the former Rhodesia Railways with effect from the 1st July, 1967, using assets of the unitary system.
6. Discussions are continuing between the same parties regarding the division

In the Appellate
Division of the
High Court of
Rhodesia

No. 73

Affidavit of
Arthur Leslie
Dated 3rd
October 1967
(Contd.)

of the assets and liabilities of
the unitary system.

7. Similarly, in connection with Central African Airways, which was constituted by the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, it has been decided to terminate the Corporation as a joint operation of the Governments of Rhodesia, Zambia and Malawi. 10
8. Discussions to this end, in which I have taken part, have been going on for some four months through officials representing the Governments of Malawi, Zambia and Rhodesia respectively.
9. These discussions were held at meetings in Salisbury and Lusaka between officials representing the Rhodesian Government, including myself and a representative of the Treasury and a representative of the Attorney General's office, and officials representing the Zambian Government, including the Permanent Secretary to the Ministry of Transport, Power and Communications, the Permanent Secretary to the Ministry of Finance and a representative of the Ministry of Legal Affairs of the Zambian Government, and officials representing the Government of Malawi, including the Secretary of Transport and Communications, the Solicitor General and a representative of the Ministry of the Treasury of the Government of Malawi. 20 30
10. These discussions have resulted in agreement between these Governments concerning the establishment of a national airline in each country with effect from the 1st September 1967. 40
11. Central African Airways has been divested under the same agreement of

243.

certain functions which have now been transferred to the three national airlines and will cease to operate on the 31st December, 1967.

12. Discussions are still continuing between the same parties as to the apportionment of liabilities and assets of Central African Airways.

10 SWORN TO at SALISBURY this 3rd day of October, 1967.

(Sgd) A. Leslie

BEFORE ME,

(Sgd) ?

Commissioner of Oaths

In the Appellate Division of the High Court of Rhodesia

No. 73

Affidavit of Arthur Leslie
Dated 3rd October 1967
(Contd.)

In the Appellate
Division of the
High Court of
Rhodesia

NO.74

AFFIDAVIT OF NOEL HUGH
BOTH A BRUCE

No.74

Affidavit of Noel
Hugh Botha Bruce
Dated 3rd
October 1967

IN THE APPELLATE DIVISION OF THE
HIGH COURT OF RHODESIA

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order First Respondent 10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of Gwelo Prison Second Respondent

- and -

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE
in his capacity as the Officer in
Charge of Que Que Prison First Respondent 20

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of
Prisons Second Respondent

- and -

CLIFFORD WALTER DUPONT Third Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth Respondent
alternatively

DESMOND WILLIAM LARDNER-BURKE Fifth Respondent 30
in his capacity as Minister of
Justice and of Law and Order

AFFIDAVIT

In the Appellate
Division of the
High Court of
Rhodesia

I, NOEL HUGH BOTHA BRUCE, hereby
make oath and say:-

No.74

Affidavit of
Noel Hugh Botha
Bruce
Dated 3rd
October 1967
(Contd.)

1. That I am the Governor of the Reserve Bank of Rhodesia and was appointed as such on the 22nd May 1964.
2. Since 11th November, 1965, the Government of the United Kingdom has adopted various measures in an attempt to damage the economy of Rhodesia; these measures include, inter alia:-

10

(a) the placing of certain of the external assets of the said Bank under the control of a Board of Directors in London appointed by the British Government with the result that these assets cannot be used by the Reserve Bank of Rhodesia;

20

(b) the exclusion of Rhodesia from the sterling area with the result that Rhodesia has lost the privileges associated with membership of the sterling area;

30

(c) the prohibition of exports of goods to and imports of goods from Rhodesia with limited exceptions;

(d) the taking of active steps to persuade other countries to adopt measures similar to those described above;

40

(e) the proposal of a resolution for the consideration of the United Nations Security Council to the effect that all steps should be taken, including the use of force if necessary, to

In the Appellate
Division of the
High Court of
Rhodesia

No.74

Affidavit of
Noel Hugh Botha
Bruce
Dated 3rd
October 1967
(Contd.)

prevent the supply of crude oil to Rhodesia through Beira. Such resolution was passed by the Security Council on or about 9th April, 1966;

- (f) the taking of steps which resulted in the imposition by the United Nations Organisation in December, 1966, of mandatory sanctions on the import and export of various products to and from Rhodesia; 10
- (g) the institution by the Governor of the British version of a Board of Directors referred to in paragraph 2(a) hereof of legal proceedings in Western Germany to prevent the delivery of bank notes to the said Bank in Salisbury. 20
3. It is part of my duties to deal with the measures described in paragraph 2 hereof and I can say that:-
- (a) the said Bank has made satisfactory arrangements to effect international payments and Rhodesia is not only surviving such measures but that since 11th November, 1965 there has been an expansion in her economy and an increase in the gross national product; 30
- (b) the said legal proceedings were unsuccessful in three courts in Western Germany but were eventually settled following repeated representations by the Governor of the said British version of a Board of Directors on terms specified by me. I agreed to a settlement to avoid political embarrassment to the 40

In the Appellate
Division of the
High Court of
Rhodesia

NO.75

CERTIFICATE OF NOTARY PUBLIC

No.75

Certificate of
Notary Public
Dated 11th
October 1967

I FELIX WILLIAM GRAIN, of the City
of London Notary Public duly admitted
and sworn practising in the said City
DO HEREBY CERTIFY AND ATTEST

THAT on the day of the date hereof
before me personally came and appeared Sir
HENRY HARDMAN, K.C.B., the Declarant
named and described in the hereunto annexed 10
Affirmation, who signed the same in my
presence, and by solemn affirmation which
he then made before me in due form of
law, he did solemnly and sincerely affirm
and declare to be true the several matters
and things mentioned and contained in the
said Affirmation.

IN TESTIMONY WHEREOF I have hereunto
set my hand and affixed my Seal of Office
in the City of London aforesaid this 20
eleventh day of October One thousand
nine hundred and sixty seven.

(Sgd) F.W. GRAIN
Notary Public
London.

NO. 76

AFFIRMATION OF SIR HENRY
HARDMAN

In the Appellate
Division of the
High Court of
Rhodesia

No.76

Affirmation of
Sir Henry
Hardman
Dated 11th
October 1967

IN THE APPELLATE DIVISION OF
THE HIGH COURT OF RHODESIA AT SALISBURY

IN THE MATTERS BETWEEN:

(1) STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten- Second
dent of Gwelo Prison Respondent

(2) LEO SOLOMON BARON Appellant

- and -

20 NORMAN AYRE
in his capacity as the Officer First
in Charge of Que Que Prison Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of Second
Prisons Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

30 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister Fifth
of Justice and of Law and Order Respondent

In the Appellate
Division of the
High Court of
Rhodesia

No.76

Affirmation of
Sir Henry
Hardman
Dated 11th
October 1967
(Contd.)

I, SIR HENRY HARDMAN, K.C.B., of 31
Cholmeley Park, London, N.6. hereby
solemnly and sincerely affirm :

1. I am the Governor and Trustee of the
Reserve Bank of Rhodesia (hereinafter
referred to as "the Bank"), having been
appointed to that office on 29 September,
1967, in succession to Sir Sydney Caine,
by instrument under the hand of one of
Her Majesty's Principal Secretaries of
State made in pursuance of the Reserve
Bank of Rhodesia Order 1965 as amended
by the Reserve Bank of Rhodesia Order
1967. 10

2. I have read the affidavit sworn
in this case on 3 October, 1967, by
Noel Hugh Botha Bruce.

3. With reference to paragraph 1 of
Mr. Bruce's affidavit, I deny that he
is at present the Governor of the Bank
and I refer this Honourable Court to
Article 2 of the Reserve Bank of Rhodesia
Order 1965. 20

4. With reference to paragraph 2(g)
of Mr. Bruce's affidavit I say, from
the knowledge that I have acquired
in my capacity as Governor and Trustee
of the Bank, that the position is
that, in addition to certain criminal
proceedings, for which the Bank had no
responsibility, that were taken in
the German courts against the printers
of the banknotes in question, the
Bank itself instituted certain civil
proceedings in the German courts against
the printers. It is correct that those
civil proceedings were instituted in
order to prevent the delivery of the
banknotes to Salisbury. It is also
correct that, as a result of a compromise
of those proceedings whilst they were
still pending before the German
courts, the notes were not delivered
to Salisbury and cannot now be so
delivered without the consent of
the Bank (that is to say, and so 30 40

long as the Reserve Bank of Rhodesia Order 1965, as amended, remains in force, without the consent of myself or anyone succeeding me in my capacity as Governor and Trustee of the Bank).

In the Appellate
Division of the
High Court of
Rhodesia

No.76

Affirmation of
Sir Henry
Hardman
Dated 11th
October 1967
(Contd.)

10 5. I deny the implication in the first
half of the first sentence of paragraph
3(b) of Mr. Bruce's affidavit that
the Bank was unsuccessful in three
separate legal proceedings in Germany
in respect of the banknotes. As I
have explained, the Bank was concerned
only in the civil proceedings. In these
proceedings the court of first instance
expressly upheld the position of Sir
Sydney Caine and his fellow directors
(who then constituted the Board of
Directors of the Bank under the Order in
Council of 1965) as the sole legitimate
20 representative body of the Reserve Bank
of Rhodesia. Having made that finding,
however, the German court decided
that the case was not a proper one in
which to grant an injunction against
the delivery of the notes in pursuance
of the printers' contract. This refusal
was the subject of an appeal to a higher
court but the proceedings were compromised
and withdrawn whilst the appeal was still
30 pending.

40 6. The assertion in the first sentence
of paragraph 3(b) of Mr. Bruce's affidavit
that the proceedings were settled following
repeated representations by Sir Sydney
Caine on terms specified by Mr. Bruce is
untrue. At various stages of the case
there were suggestions both from the Bank
and the printers that it might be
compromised, primarily because of
representations made by or on behalf of
the printers that they were innocent
parties who were unconcerned with the
political issues involved, who were
engaged only in an ordinary commercial
transaction and who were likely to lose
a very large sum in costs and profits if
the transaction which they had entered into

253.

NO.77

CERTIFICATE OF NOTARY
PUBLIC

In the Appellate
Division of the
High Court of
Rhodesia

No.77

Certificate of
Notary Public
Dated 13th
October 1967

I FELIX WILLIAM GRAIN, of the
City of London Notary Public duly
admitted and sworn practising in the
said City DO HEREBY CERTIFY AND ATTEST

10 THAT on the day of the date hereof
before me personally came and appeared
Sir LESLIE MONSON, K.C.M.G., C.B., the
Deponent named and described in the
hereunto annexed Affidavit, who signed
the same in my presence and having been
by me first duly sworn, made oath and
said that the several matters and things
mentioned and contained in the said
Affidavit were true and correct.

20 IN TESTIMONY WHEREOF I have hereunto
set my hand and affixed my Seal of Office
in the City of London aforesaid this
thirteenth day of October One thousand
nine hundred and sixty seven.

F.W. Grain
NOTARY PUBLIC
LONDON

In the Appellate
Division of the
High Court of
Rhodesia

NO.78

AFFIDAVIT OF SIR LESLIE
MONSON

No.78

Affidavit of Sir
Leslie Monson
Dated 13th
October 1967

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

IN THE MATTERS BETWEEN:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent 10
Justice and Law and Order

- and -

FREDERICK PHILLIP GEORGE Second
in his capacity as Superinten- Respondent
dent of Gwelo Prison

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE First
in his capacity as the Officer Respondent 20
in Charge of Que Que Prison

- and -

HENDRIK STEPHANUS BEZUIDENHOUT Second
in his capacity as Director of Respondent
Prisons

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE Fifth
in his capacity as Minister of Respondent 30
Justice and of Law and Order

I, SIR LESLIE MONSON, K.C.M.G., C.B.,
of Golf House, Goffers Road, Blackheath,
London, S.E.3. hereby make oath and say:-

In the Appellate
Division of the
High Court of
Rhodesia

No.78

Affidavit of Sir
Leslie Monson
Dated 13th
October 1967
(Contd.)

10 1. I am a Deputy Under-Secretary of
State in the Commonwealth Office of
the Government of the United Kingdom.
I am the Superintending Deputy Under-
Secretary of State for the Departments
of the Commonwealth Office that are
responsible for the affairs of Southern
Rhodesia and also for the Departments
of the Commonwealth Office that are
responsible for matters relating to
the Republic of Zambia. The evidence
that I give in this affidavit is based
on knowledge that I have personally
acquired in the course of my official
duties in that capacity, either by reason
of my personal participation in the
20 respective transactions involved or
from my perusal of the relevant official
papers and reports.

2. I have read the affidavit sworn in
this case on 3rd October 1967 by Desmond
William Lardner-Burke.

30 3. With reference to paragraph 3 of
that affidavit, I state that the action
that has been taken, that is being
taken and that will be taken by Her
Majesty's Government in the United Kingdom
to bring to an end the present illegal
regime in Southern Rhodesia is not
confined, as there suggested, to economic
sanctions. For example, Her Majesty's
Government in the United Kingdom,
remaining responsible for Southern
Rhodesia's international relations, have
taken action to urge the Governments of
other States and international
40 organisations not to recognise Southern
Rhodesia as an independent State or the
present regime in Southern Rhodesia as
the legitimate Government of that country.
No other State or international
organisation does accord such recognition
and this fact undoubtedly contributes to

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Division of the
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Rhodesia

No.78

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the failure of the regime to establish its position. Similarly, Her Majesty's Government in the United Kingdom have taken, and continue whenever necessary to take, action to prevent emissaries of the illegal regime from representing the Government of Southern Rhodesia in other countries or on the governing bodies or assemblies of international organisations. While the policy of economic sanctions has not yet succeeded in causing the ending of the present regime in Southern Rhodesia, nevertheless that policy has had and is having a considerable impact on the economy of Southern Rhodesia and I respectfully refer this Honourable Court to paragraphs 6 to 8 of this affidavit. In view, inter alia, of the facts therein stated, of the fact that no Government or international organisation has yet announced that it recognises the independence of Southern Rhodesia or the status of the present regime as the de facto or the de jure Government, and of the fact that the regime's claim to lawfulness is constantly challenged both outside and inside Southern Rhodesia, not least in this Honourable Court, I deny the assertion in Mr. Lardner-Burke's affidavit (in so far as it is an assertion of fact) that the outcome of the action taken to cause the downfall of the regime is no longer uncertain in the sense of having failed. 10

4. With reference to the assertion in paragraph 3 of Mr. Lardner-Burke's affidavit that the Prime Minister has publicly acknowledged that the action taken by Her Majesty's Government in the United Kingdom has not succeeded, I say that, to the best of my knowledge, information and belief, the Prime Minister has made no such acknowledgment save in a context, and in reply to a question, which made it clear that he was stating only that the Government's 30 40

policy had not so far succeeded in ending the rebellion.

5. I have read the affidavit sworn in this case on 3rd October 1967 by Arthur Leslie. With reference to that affidavit and what is said with regard thereto in paragraph 4 of Mr. Lardner-Burke's affidavit, I say as follows. The account given in Mr. Leslie's
 10 affidavit is misleading and the inferences drawn from it are unwarranted. It is not true that the Government of Zambia and the Government of Malawi have concluded agreements with the present regime in Southern Rhodesia, as the Government of Southern Rhodesia, for the termination of the unitary railway system and the unitary airways system. In reply to representations made by
 20 the Zambian Government on the matters referred to in Mr. Leslie's affidavit, Her Majesty's Government in the United Kingdom have suggested that the necessary technical discussions and negotiations should be carried on in the first instance between officials of the Government of Zambia and officials of the Government of Southern Rhodesia (and also, where
 30 appropriate, officials of the Government of Malawi). Since the true status of officials in Southern Rhodesia is that they remain servants of the lawful Government of that country, headed by His Excellency the Governor Sir Humphrey Gibbs, such action would not involve any recognition of the illegal regime. The fact that the Government of Zambia has permitted its own officials to conduct the necessary negotiations with Southern
 40 Rhodesian officials does not therefore in any way imply recognition of those persons in Salisbury who purport to be Minister of the Government of Southern Rhodesia. Her Majesty's Government in the United Kingdom agreed that when these negotiations and discussions at official level were completed, and if they resulted in an agreement at that level which was

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 Dated 13th October 1967
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In the Appellate
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No.78

Affidavit of Sir
Leslie Monson
Dated 13th
October 1967
(Contd.)

approved by the Government of Zambia and by Her Majesty's Government in the United Kingdom, the question of action to be taken by Her Majesty's Government in the United Kingdom to give that agreement legal effect would be further considered. It is in these circumstances that the discussions and negotiations referred to in Mr. Leslie's affidavit have been taking place. To the best of my knowledge, information and belief, there have been no negotiations or discussions between Ministers of the Zambian Government and the members of the illegal regime and there has been nothing which can be properly described as an agreement between the Government of Zambia and the regime as such.

10

6. I have read the affidavit sworn in this case on 26th September 1967 by David Watson Young. I do not accept the accuracy of the various assertions contained in paragraphs 7 to 10 of that affidavit. The statistics which are there quoted are highly selective and misleading. No quarterly trade statistics have been published by the illegal regime in 1967. Even the limited 1966 statistics which the regime have been willing to publish - and these are significantly selective - show that exports had fallen from about £165 million in 1965 to about £105 million in 1966. As regards imports, the 1966 statistics themselves show that imports fell from £120 million in 1965 to about £84 million in 1966. The fact that the illegal regime have so far been able to balance a budget is explained by the fact that they have resorted to disowning Southern Rhodesia's overseas debt and to using the country's savings to meet the cost of sanctions (for example, by buying and stock-piling the commodities, such as tobacco and sugar, which they are prevented from selling abroad). Last year alone the regime borrowed £35½ million by Treasury bills.

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7. With reference to what is said in paragraph 9 of Mr. Young's affidavit, the figure there given of a fall of 1.9 per cent in the gross national product (which is equivalent to 2.6 per cent in the gross domestic product) between 1965 and 1966 does not take into account the natural increase in the population or the normal annual increase in the gross domestic product which on average was 6 per cent before the illegal declaration of independence. Another factor which is not reflected is the net build-up of £22.8 million in stocks despite the run-down of the very high level of stocks of imported goods held before the illegal declaration of independence. The increase of stocks of commodities such as tobacco appears to have amounted to just over £30 million, that is to say, nearly 10 per cent of the gross domestic product. Making no allowance for the run-down of the stocks held before 11th November 1965, the gross domestic product for 1966 was about 15 per cent lower than it would have been had the rebellion not taken place. A country with a high rate of population growth, such as Southern Rhodesia, needs a rapid rate of increase in the gross domestic product if living standards are not to decline steeply.

8. Other consequences of the imposition of economic sanctions which I can cite include the closure of the oil refinery at Feruka, which materially affects the cost of petroleum consumed in Southern Rhodesia; the reduction of the target for next year's tobacco crop to 132 million lbs compared with a figure of 280 million lbs. before the illegal declaration of independence; the closure of Southern Rhodesia's motor vehicle assembly plants; the grave financial position of the sugar industry in Southern Rhodesia; and the fact that Rhodesian Railways is now operating at a substantial

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October 1967
(Contd.)

loss. I respectfully remind this
Honourable Court that the mandatory
economic sanctions imposed by the
Security Council of the United Nations
have so far been operating only for a
relatively short period. Their effect
on the Southern Rhodesian economy should
become increasingly effective with the
passage of time.

SWORN at Downing Street in)
the City of Westminster) Leslie Monson
England, this 13th day)
of October, 1967,)

10

Before me,

(Sgd) F.W. Grain

Notary Public

London

261.

NO. 79

CERTIFICATE OF NOTARY PUBLIC

I FELIX WILLIAM GRAIN, of the City of London Notary Public duly admitted and sworn practising in the said City DO HEREBY CERTIFY AND ATTEST

10 THAT on the day of the date hereof before me personally came and appeared The Honourable Sir JOHN HENNIKER-MAJOR K.C.M.G., C.V.O., M.C., the Deponent named and described in the hereunto annexed Affidavit, who signed the same in my presence and having been by me first duly sworn, made oath and said that the several matters and things mentioned and contained in the said Affidavit were true and correct.

20 IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Seal of Office in the City of London aforesaid this eleventh day of October One thousand nine hundred and sixty seven.

F.W. Grain

NOTARY PUBLIC

LONDON.

In the Appellate
Division of the
High Court of
Rhodesia

No.79

Certificate of
Notary Public
Dated 11th
October 1967

In the Appellate
Division of the
High Court of
Rhodesia

NO.80
AFFIDAVIT OF SIR JOHN
HENNIKER-MAJOR

No.80

Affidavit of
Sir John
Henniker-Major
Dated 11th
October 1967

IN THE APPELLATE DIVISION OF THE HIGH COURT
OF RHODESIA AT SALISBURY

IN THE MATTERS BETWEEN:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order First 10
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of Gwelo Prison Second
Respondent

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE
in his capacity as the Officer in
Charge of Que Que Prison First 20
Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of
Prisons Second
Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order Fifth 30
Respondent

I, THE HON. SIR JOHN HENNIKER-MAJOR, K.C.M.G., C.V.O., M.C., of Decoy Farm, Melton, near Woodbridge, Suffolk, hereby make oath and say:-

In the Appellate
Division of the
High Court of
Rhodesia

No.80

Affidavit of
Sir John
Henniker-Major
Dated 11th
October 1967
(Contd.)

10 1. I am an Assistant Under-Secretary of State in the Foreign Office of the Government of the United Kingdom. I am the Superintending Assistant Under-Secretary for the Departments of the Foreign Office that are responsible for the affairs of Southern Africa, including matters relating to the Republic of South Africa. It is my duty, in that capacity, to be concerned with all exchanges that take place between Her Majesty's Government in the United Kingdom and the Government of the Republic of South Africa. It is my duty either personally to take part in such exchanges or personally to acquaint myself with the official reports of such exchanges.

20 2. I have read the affidavit sworn in this case on 3rd October 1967 by Desmond William Lardner-Burke.

30 3. In announcing in a public meeting on 8th September 1967 the taking of the measures referred to in paragraph 2 of Mr. Lardner-Burke's affidavit, the Prime Minister of the Republic of South Africa said words to the following effect:
"As regards the political situation in Rhodesia this action has nothing to do with the situation which arose there about two years ago. We do not interfere in their domestic affairs or in the unfortunate disagreement between Rhodesia and Britain. We still regard this as a domestic matter which has to be resolved between them." In the same speech the Prime Minister of the Republic said, as reported to me, that he had instructed the Foreign Minister of the Republic to inform Her Majesty's Government in the United Kingdom of the decision by the Government of the Republic to despatch security forces into Southern Rhodesia. I can state from my personal knowledge that Her Majesty's Government in the United

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Kingdom were indeed so informed. I respectfully invite this Honourable Court to draw the inference from this that the Government of the Republic was thereby recognising the continuing competence of Her Majesty's Government in the United Kingdom in respect of Southern Rhodesia and that there has therefore been no change in the attitude of the Government of the Republic with respect to the constitutional relationship between Southern Rhodesia and Her Majesty's Government in the United Kingdom. I have studied the reports that have been submitted to me of the various statements made by Ministers and officials of the Government of the Republic of South Africa, both in public and in private confidential discussions with representatives of Her Majesty's Government in the United Kingdom, concerning this matter. These confirm the inference with respect to the attitude of the Government of the Republic that I have invited this Honourable Court to draw from the facts that I have cited.

10

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4. With reference to paragraph 4 of the affidavit by Mr. Lardner-Burke, I state that it is part of my official duty to know, and I would know, if the Government of any other State had accorded any measure of recognition to Southern Rhodesia as an independent State or to the present illegal regime in Southern Rhodesia as the Government of that country. I state of my personal knowledge that no Government has accorded any such recognition. I respectfully remind this Honourable Court that for any Government to do so would be contrary to the terms of Resolution No. 216 of the Security Council of the United Nations adopted on 12th November 1965 as affirmed by Resolution No. 217 adopted on 20th November 1965 and as again affirmed by Resolution No.232 adopted on 16th December 1966.

30

40

SWORN at Downing Street, in)
the City of Westminster,) John Henniker-
England, this 11th day) Major
of October 1967)

Before me, F.W. Grain.
Notary Public
London.

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NO. 81
FURTHER AFFIDAVIT OF NOEL HUGH
BOTHA BRUCE

In the Appellate
Division of the
High Court of
Rhodesia

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

No.81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967

IN THE MATTERS BETWEEN:

(1) STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of Gwelo Prison Respondent

(2) LEO SOLOMON BARON Appellant

- and -

20 NORMAN AYRE
in his capacity as the Officer
in Charge of Que Que Prison First
Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of Second
Prisons Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

30 DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of Fifth
Justice and Law and Order Respondent

In the Appellate
Division of the
High Court of
Rhodesia

FURTHER AFFIDAVIT

I, NOEL HUGH BOTHA BRUCE, hereby make
oath and say:-

No.81
Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

- 1. That I made an affidavit in connection with the above-mentioned proceedings on the 3rd day of October, 1967.
- 2. That I have read the document solemnly and sincerely affirmed by a certain Sir Henry Hardman, K.C.B. before the Notary Public F.W. Grain of London, England on the 11th day of October, 1967 filed of record in these proceedings and, in connection therewith, I say as follows -

10

(a) Ad paragraph 1 thereof -

- (i) I am the Governor of the only Reserve Bank of Rhodesia which is recognised and effective in Rhodesia and that I was appointed as such on the 22nd May, 1964 in terms of section 6 of the Reserve Bank of Rhodesia Act, No. 24 of 1964.

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- (ii) I claim that the above-mentioned Act No. 24 of 1964 (as amended by Act No.28 of 1966 and Act No. 10 of 1967 of the Legislature of Rhodesia) is the only legislation concerning the establishment, administration and functions of the Reserve Bank of Rhodesia which is generally recognised and effective in Rhodesia.

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- (iii) I further claim that the said Sir Henry Hardman was appointed Governor and Trustee of the "Bank" which was set up in England under British legislation

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and that such legislation is totally ineffective and is not generally recognised in Rhodesia.

In the Appellate Division of the High Court of Rhodesia

(b) Ad paragraphs 1 and 3 thereof -

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Further Affidavit
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Botha Bruce
Dated 30th
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(Contd.)

10

(i) In certain proceedings instituted at the end of 1966 and early in 1967 in the courts of the Federal Republic of Western Germany in connection with the printing in Germany of bank notes for the Reserve Bank of Rhodesia in Salisbury, certain affidavits made in Rhodesia were filed of record and were duly admitted as evidence in those proceedings.

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(ii) The aforementioned affidavits which were made at the end of December, 1966 were sworn to by the senior executive officials at that time available in Salisbury of all the five commercial banks, of the only two merchant banks and of the only two discount houses all carrying on business at such time in Rhodesia, by the Manager of the Land and Agricultural Bank of Southern Rhodesia, by the senior officials of certain other financial institutions and by various heads of Government Ministries and Departments in Rhodesia, in their personal capacities.

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(iii) In all the said affidavits the deponents thereof stated, inter alia, as follows -

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"The Governor, the Deputy
Governor and the remaining
Directors of the Board of
Directors of the Reserve
Bank duly appointed in
terms of section 6 of
the Act" (namely the
Reserve Bank of Rhodesia
Act, No.24 of 1964)

"are the only Directors 10
of the Reserve Bank who
are recognised and
accepted in Rhodesia as
Directors of the Reserve
Bank and the Government of
Rhodesia, the commercial
banks and all other
financial institutions
in Rhodesia have ignored
the existence and 20
authority of any person
who may have been appointed
by the British Government
as Directors of the
Reserve Bank in place
of those duly appointed
in manner aforesaid".

(iv) In one or two of the
aforesaid affidavits the
wording of the passage
quoted above was slightly
different, but the effect
was the same. 30

(v) In the course of my duties
I am often in communication
with many of the persons
who made the aforesaid
affidavits and I have no
reason to believe that
they, or any of the 40
aforesaid deponents, now
hold views contrary to or
different from those
expressed by them in their
said affidavits.

(vi) I am satisfied from my

10 observations and from
 information which I receive
 from my staff that the
 Reserve Bank of Rhodesia
 in Salisbury, under my
 management as Governor,
 continues to receive the
 complete co-operation of
 all the commercial banks and
 all other financial
 institutions in Rhodesia
 and I am, for the same
 reasons, also satisfied
 that the said banks and
 institutions unquestionably
 accept the authority of the
 Reserve Bank of Rhodesia as
 constituted by laws passed
 only in Rhodesia and under
 20 my management as Governor.

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 Division of the
 High Court of
 Rhodesia

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Further Affidavit
 of Noel Hugh
 Botha Bruce
 Dated 30th
 October 1967
 (Contd.)

30 (vii) I am able to say with full
 knowledge of the situation
 that since its establishment
 and, in particular, since
 the 11th November, 1965,
 all requests, instructions
 and directions addressed by
 the Reserve Bank of Rhodesia
 in Salisbury to the said
 commercial banks and other
 financial institutions in
 Rhodesia have been complied
 with and I have no reason to
 believe that this will not
 continue to be the position
 in the future.

40 (viii) To the best of my knowledge,
 information and belief no
 requests, instructions
 or directions have been
 addressed to any of the
 aforesaid banks and financial
 institutions by Sir Henry
 Hardman, or by any other
 person appointed by the
 British Government to conduct
 the affairs of the Reserve
 Bank of Rhodesia, and if,

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Further Affidavit
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Botha Bruce
Dated 30th
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(Contd.)

contrary to my belief,
there have been such requests,
instructions or directions,
I know of no occasion
when they have been
complied with in Rhodesia.

(c) Ad paragraph 4 thereof -

- (i) I consider it naive of
Sir Henry Hardman to say
that the "Bank" of which
he has been appointed
"Governor and Trustee" had
no responsibility for the
criminal proceedings brought
in the German courts and
referred to in the first
sentence of this paragraph,
for the "Bank" to which he
refers is a creature of
statute of the British
Government and it is clear
from information at my
disposal that either British
Government representatives
or representatives of the
aforesaid "Bank" in London
were instrumental in
having the said criminal
proceedings instituted. 10
- (ii) In this particular regard I
quote from a ruling given
on the 6th March, 1967
by the First Munich District
Bureau of Public Prosecutions
signed by the "Erste
Staatsanwalt" or Deputy
State Attorney, the certified
translation into English
of which reads as follows - 30
- "Investigation proceedings
concerning the manufacture
of counterfeit money -
or complaint of December
20, 1966 on behalf of Sir
Sydney Caine - were 40

dropped since the investigations offered no sufficient cause to file information or to initiate objective forfeiture proceedings."

In the Appellate Division of the High Court of Rhodesia

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10 (iii) I intend to deal with the remainder of this paragraph in my reply to paragraph 6 of Sir Henry Hardman's said solemn affirmation.

Further Affidavit of Noel Hugh Botha Bruce Dated 30th October 1967 (Contd.)

(d) Ad paragraph 5 thereof -

- 20 (i) With regard to the first sentence of this paragraph I refer to paragraph (c) above.
- (ii) With regard to the second, third and fourth sentences of this paragraph, it is correct that in the (civil) judgment given by the Frankfurt/Main District Court on the 27th January, 1967 that Court upheld the "de jure" position of Sir Sydney Caine and his fellow directors, but no mention has been made by Sir Henry Hardman of the fact that that Court, at considerable length, held that Sir Sydney Caine and his fellow directors were powerless to direct the affairs of the Reserve Bank of Rhodesia within Rhodesia and that it, inter alia, held "that the Board of Directors is unable to enforce compliance with its wishes in Salisbury".
- 30
- 40

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Further Affidavit
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Botha Bruce
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(Contd.)

(iii) Furthermore, Sir Henry
Hardman has also omitted
to mention that the afore-
said Court likened the
position of Sir Sydney Caine
and his fellow directors
to "that of a man to whom
the right will accrue in
the future" and in addition,
in referring to Sir Sydney
Caine's "Bank", stated - 10

"that therefore its
position as to the facts
and to legal realities
turns out to be consider-
ably weakened. It does
not appear as being the
unrestricted holder of
the rights pertaining to
the Bank and of its 20
authority as Board of
Directors, but rather it
appears as a Board which -
as soon as political
circumstances permit it -
should be given, in
addition to its de jure
legitimation now already
existing, also the
possibility of the de 30
facto management and the
de facto exercise of all
powers. So the position
of the Board just
resembles that of a man to
whom such rights will
accrue in future. Although
it was intended to give
it the full legal position
immediately, it, however, 40
accrued only de jure
or, as to say, 'on paper'.
Those who rule to the
contrary would misjudge
legal realities."

(iv) The aforesaid quotations
have been taken from a

certified translation into English of the aforesaid judgment, made by one Hans Bader, who to the best of my knowledge, information and belief, has been duly admitted as an official translator to the Courts of the Federal Republic of Western Germany.

In the Appellate Division of the High Court of Rhodesia

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Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

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- (v) Although the aforesaid judgment does not expressly describe me as the "de facto" Governor of the Reserve Bank of Rhodesia in Salisbury I contend that it is clear from the judgment as a whole that the aforesaid German Court recognised the de facto position of myself as Governor and of my fellow Directors as Directors of the Reserve Bank established by the Reserve Bank of Rhodesia Act, No.24 of 1964 and that it was on those grounds that the said German Court upheld the validity of the contract of supply between the German firm of note printers and the Reserve Bank in Salisbury and refused Sir Sydney Caine's application for an injunction to prevent the dispatch of bank notes from Germany to Salisbury.

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- (vi) It is correct that there was an appeal by Sir Sydney Caine to a Higher Court in Germany, that this appeal was subsequently withdrawn and that the parties to the suit agreed to a settlement but I shall refer to this more fully in my reply to paragraph 6 of Sir Henry

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Hardman's said solemn
affirmation.

No.81

Further Affidavit
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(Contd.)

(e) Ad paragraph 6 thereof -

- (i) While it may be correct that Sir Sydney Caine did not personally repeatedly make representations to the printers for a compromise, I have been assured by the Managing Director of the printers, and have no reason to doubt such assurance, that the legal representatives of Sir Sydney Caine and his Board of Directors and/or of the British Government invariably initiated the approaches, of which there were a number on various occasions, for a compromise and that the printers did not at any time initiate any such approach. 10
- (ii) I accept that, following approaches from British representatives for a compromise, the printers from time to time indicated that a compromise might be reached, subject to certain conditions. 30
- (iii) To avoid any possible mis-interpretation I wish to explain that when, in the first sentence of paragraph 3(b) of the affidavit which I made in these proceedings on the 3rd October, 1967, I used the phrase "were eventually settled following repeated representations by the Governor of the said British version of a Board of Directors on terms specified by me" I did not intend to mean that the 40

terms of the representations were specified by me, but that the terms of the settlement were specified by me.

In the Appellate Division of the High Court of Rhodesia

No.81

Further Affidavit of Noel Hugh Botha Bruce Dated 30th October 1967 (Contd.)

- 10 (iv) I refute the statement made in the last part of the first sentence of this particular paragraph of Sir Henry Hardman's said solemn affirmation and repeated in the fourth sentence thereof and reiterate that the terms of settlement were laid down by me
- 20 (v) At no time have I claimed that the terms of settlement were dictated by me to Sir Sydney Caine, nor have I at any time communicated with Sir Sydney Caine in regard to the affairs of the Reserve Bank of Rhodesia, for I do not recognise that anyone appointed either directly or indirectly by the British Government has any authority whatsoever in relation to the affairs of the said Reserve Bank.
- 30 (vi) To the best of my knowledge, information and belief it was made clear to Sir Sydney Caine and to the British Government, through their respective representatives and/or lawyers, by the printers, that the printers could not agree to any compromise unless they, the printers, were relieved by me of their contractual obligations to supply the Reserve Bank of Rhodesia in Salisbury with the bank notes
- 40

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Division of the
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(Contd.)

subject of the dispute.

- (vii) Furthermore, the legal representatives of Sir Sydney Caine and/or of the British Government were aware of the fact that the Managing Director of the printers personally visited me in Salisbury in order to secure the release of his company from the contract and they were also aware of the fact that such release could only be achieved if I were fully satisfied with the terms of the then contemplated compromise. 10
- (viii) I know from my conversations with the Managing Director of the printers and verily believe that before he, the said Managing Director, came to see me in Salisbury it was fully understood by the legal representatives of Sir Sydney Caine and/or the British Government that he, the said Managing Director, could only hope to secure his company's release from the said contract if the terms of the contemplated compromise met with my approval. 30
- (ix) The terms of the contemplated compromise were, in fact, fully discussed by me with the Managing Director of the printers and I laid down certain conditions for the release of the printers from their contractual obligations. It is my contention, therefore, that the terms of the said compromise were effectively specified by me and it is 40

also my belief, based on information given to me by the Managing Director of the printers concerning the actual compromise agreed upon, that the whole position as set out above was fully explained to and understood by the legal representatives of Sir Sydney Caine and/or of the British Government.

In the Appellate Division of the High Court of Rhodesia

No. 81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

10

(x) With reference to the third sentence of this particular paragraph, while it may be true that, in some small measure, the position of the printers and the potential financial losses with which they were faced may have been taken into account by Sir Sydney Caine and his fellow directors when the approaches were made to the printers for a compromise, it is my belief, and this, in my view is substantiated by subsequent actions of the aforesaid British representatives, that the true reason for the anxiety on the part of Sir Sydney Caine and his fellow directors and/or the British Government to reach a compromise stemmed from their very real fear that any appeals to the Higher Courts would be unsuccessful and therefore intolerably embarrassing both to Sir Sydney Caine's "Bank" and to the British Government.

20

30

40

(xi) I know that the German printers were not unduly concerned about any potential financial loss,

In the Appellate
Division of the
High Court of
Rhodesia

No.81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

because they had been given
an assurance by me when the
injunction was first sought
that the Reserve Bank of
Rhodesia in Salisbury
would indemnify them against
any financial loss. The
real concern of the printers
was that their reputation
and standing as responsible
bank note printers of integrity
and world-wide repute should
not be tarnished by any
suggestion that they had
accepted orders from un-
authorised persons. Clearly,
therefore, their interests could
best be served by a final
decision of the courts that
the Reserve Bank of Rhodesia
in Salisbury was fully
entitled to contract with
them. In the event, the
printers were willing to accept
the withdrawal by Sir Sydney
Caine and his fellow directors
of the appeal to a higher
Civil Court as vindicating
their own position and, in
effect, an admission of defeat
by Sir Sydney Caine and his
fellow directors

10

20

30

(xii) With reference to the fifth
and sixth sentences of this
paragraph, it is true, as I
have stated above, that I
did not at any time have
any direct contact with Sir
Sydney Caine or his
representatives or those of
the British Government and
that I did not personally
enter into any direct
negotiations with him or
such representatives, nor
was I a signatory to the

40

agreement recording the settlement, but to the best of my knowledge, information and belief Sir Sydney Caine and/or his representatives were fully aware, from the commencement of their approaches for settlement, of the fact that any compromise would have to be subject to my full concurrence.

In the Appellate
Division of the
High Court of
Rhodesia

No.81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

10

(f) Ad paragraph 7 thereof -

20

It is true that the agreement embodying the compromise of the civil proceedings in the German Court gives to Sir Sydney Caine or his successors in office certain rights of veto on the ultimate disposal of the notes now held in Germany. It is also true, however, that rights of veto of equal, if not greater, force are vested in the printers and that to the certain knowledge of Sir Sydney Caine and his successors the printers will only forego or exercise their rights under the agreement on instructions from me or my successor in office so that, in practice, the final disposal of the bank notes being held in Western Germany is subject to the effective control of the Reserve Bank of Rhodesia in Salisbury under my management as Governor or under the management of my successors in office.

30

40

3. That I have also read the affidavit sworn by a certain Sir Leslie Monson, K.C.M.G., C.B., before the Notary Public F.W. Grain of London, England on the 13th day of October, 1967

In the Appellate
Division of the
High Court of
Rhodesia

No.81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

filed of record in these proceedings
and the further affidavit sworn by
David Watson Young on the 30th day of
October, 1967 and I say as follows:-

- (a) that I am in agreement with and am
able fully to confirm the statements
made by the said David Watson Young
with reference to the seventh and
eighth sentences of paragraph 6 of
Sir Leslie Monson's said affidavit; 10
- (b) that the Reserve Bank of Rhodesia
in Salisbury, under my management
as Governor, are the bankers to the
Government of Rhodesia and also act
for the Rhodesian Government in the
raising of loans by the sale of
stock and Treasury Bills issued by
the said Government;
- (c) that the inferences in the seventh
and eighth sentences of paragraph 6
of Sir Leslie Monson's said affidavit
that the Rhodesian Government has
resorted to reprehensible practices
in order to overcome the effects of
sanctions is unfounded; 20
- (d) that I am able to say from my
personal knowledge gained in raising
both short-term and long-term loans
for the Rhodesian Government that
the ready response by investors
to the sale of Rhodesian Government
Treasury Bills and the flotation
of Rhodesian Government loans is in
a large measure attributable to the
confidence which investors have in
the Rhodesian Government, in the
management of Rhodesian Government
finance and in the present and
future economic strength of Rhodesia
as a whole; and 30
- (e) with reference to the eighth sentence
of paragraph 6 of Sir Leslie Monson's
said affidavit, it is misleading to
say that "last year alone "the regime" 40

10

borrowed £35½ million by Treasury Bills" as though the figure of £35½ million was a static or fixed amount, since the level of Treasury Bills against which funds are borrowed fluctuates widely from time to time and, accordingly, the level of Treasury Bills issued at any one time cannot correctly be used as a very meaningful, or in any way as a conclusive measure of the effects of sanctions on Rhodesia. I point out that Treasury Bills are not issued specifically to combat sanctions, but for a variety of reasons, including the management of the country's monetary system..

In the Appellate Division of the High Court of Rhodesia

No.81

Further Affidavit
of Noel Hugh
Botha Bruce
Dated 30th
October 1967
(Contd.)

20

SWORN TO at SALISBURY this 30th day
of October 1967.

N.H.B. BRUCE

BEFORE ME

B.E. PARKE

Commissioner of Oaths.

In the Appellate
Division of the
High Court of
Rhodesia

NO.82

FURTHER AFFIDAVIT OF DESMOND
WILLIAM LARDNER-BURKE

No.82

Further Affidavit
of Desmond William
Lardner-Burke
Dated
October 1967

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order First 10
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent Second
of Gwelo Prison Respondent

(2) LEO SOLOMON BARON Appellant

- and -

NORMAN AYRE
in his capacity as the Officer
in Charge of Que Que Prison First 20
Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of
Prisons Second
Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE 30
in his capacity as Minister of
Justice and Law and Order Fifth
Respondent

I, DESMOND WILLIAM LARDNER-BURKE,
hereby make oath and say:-

In the Appellate
Division of the
High Court of
Rhodesia

No.82

1. I am the Minister of Justice and of Law and Order and have previously sworn an affidavit in this case on the 3rd October, 1967 (hereinafter referred to as "my earlier affidavit").
2. I have read the affidavit sworn in this case on the 11th October, 1967 by Sir Leslie Monson.
3. In regard to what Sir Leslie Monson says in paragraph 4 of his affidavit about my assertion that the British Prime Minister had publicly acknowledged the failure of Britain's sanctions policy, I have read the relevant Press reports, which are annexed hereto marked A, B, C, D and E. I have been unable to find therein any suggestion that the British Prime Minister in any way qualified his statement in the manner suggested by Sir Leslie Monson. There is certainly no statement that the sanctions policy will or may succeed with the passage of time or that it will or may or should become more effective with the passage of time. I therefore adhere to the assertion made in paragraph 3 of my earlier affidavit, that the British Prime Minister has publicly acknowledged that the sanctions policy has not succeeded.
4. In regard to the statement in paragraph 3 of Sir Leslie Monson's affidavit that "the regime's claim to lawfulness is constantly challenged both outside and inside Southern Rhodesia, not least in this Honourable Court", I point out that Sir Leslie Monson has not seen fit to give any details of these alleged challenges or the alleged challengers. In fact, there has been no successful challenge to the

Further Affidavit
of Desmond William
Lardner-Burke
Dated
October 1967
(Contd.)

In the Appellate
Division of the
High Court of
Rhodesia

No.82

Further Affidavit
of Desmond William
Lardner-Burke
Dated
October 1967
(Contd.)

complete and effective control which
the present Government has exercised
in Rhodesia ever since the assumption
of independence and still exercises
today. None of the action taken by
Great Britain and described by Sir
Leslie Monson in paragraph 3 of his
affidavit has had any effect what-
soever on that control, nor will
it do so. I therefore state that
the outcome of such action is no
longer uncertain, because it has
failed to achieve its purpose and
will not achieve that purpose with
the passage of time.

10

SWORN TO at SALISBURY this
day of October, 1967.

.....

BEFORE ME,

.....

Commissioner of Oaths.

NO. 83

ANNEXURE "A" TO THE AFFIDAVIT
OF LARDNER-BURKE - PRESS REPORT
FROM "THE TIMES"

In the Appellate
Division of the
High Court of
Rhodesia

No.83

Annexure "A" to
the Affidavit of
Lardner-Burke -
Press Report from
"The Times"

Dated
26th September 1967

'HARD WINTER' WARNING BY MR. WILSON.

TIMES 26.9.67

'ECONOMY ON TURN, BUT NOT FAST ENOUGH'

By Staff Reporters

10 The Prime Minister gave a warning
on television last night that "this is
going to be a difficult winter". The
economy showed signs of "being on the
turn", he said; but it would not move
fast enough to prevent winter unemploy-
ment.

20 He reaffirmed the Government's
determination to channel production into
Britain's depressed areas, but admitted
that some of the biggest and most
effective factories being built were very
costly and did not provide much employment.

MEETING NEXT WEEK WITH LORD ROBENS

Mr. Wilson said the Government were
prepared to set up publicly owned enter-
prises in the depressed areas. On pit
closures he was planning to meet Lord
Robens, Chairman of the National Coal
Board, next week.

30 He was being interviewed on
Panorama after a B.B.C. film had
been shown on the realities of
unemployment in West Cumberland. There
the out-of-work figure of 5.8 per cent
is more than twice the national average.

Mr. Wilson said: "When there have
been these economic difficulties and
an increase in unemployment, now as always

In the Appellate
Division of the
High Court of
Rhodesia

—
No.83

Annexure "A" to
the Affidavit of
Lardner-Burke -
Press Report from
"The Times
Dated 26th
September 1967
(Contd.)

in the past it is the development
areas, the depressed areas, which suffer."

Labour had taken tough measures to
get the economy right "and we are still
paying the price for these measures we
took in July, 1966". Unemployment was
rising much more slowly, as last week's
figures had shown.

BY-ELECTION BLOWS

Questioned about last week's by-
election results, he said: "We have got
to get the country strong. It would be
utterly wrong to depart from these measures
because of temporary unpopularity." They
had said the measures would not be popular.

10

As for the T.U.C.'s criticism of
Government measures, the Prime Minister
admitted: "The T.U.C. are deeply concerned
about unemployment. It is natural. We
are deeply concerned about unemployment."
But the T.U.C. and others had not put
forward other proposals for resolving
the economic difficulties.

20

"It would be wrong, when we have
now moved on the upturn, for us to panic,
however hard the winter is going to be",
Mr. Wilson said. This would lead once
more to inflation. All our sacrifices
would be thrown away, wasted.

There was bound to be a seasonal
rise in unemployment - "but there are
signs that the basic unemployment level
will be turning downwards, and we are
hopeful that there will be a big increase
in employment next year".

30

NO 'JOBLESS POOLS'

He added: "I think the economy
shows signs of being on the turn, and I
feel that is the view of many industrialists.
What it is not doing is moving fast enough

40

to prevent the difficulties of this winter."

He dismissed any suggestion that the Government were seeking pools of unemployment. "The present level is higher than is acceptable to me and to the Government", he said.

10 The Government would not get the country on the right path again if it played at politics by reacting to by-election results in a way that might make it more popular.

Asked why he had assumed personal control over the Department of Economic Affairs the Prime Minister replied that he had wanted to get identified with it.

20 "I wanted to make a direct impact on industry", he said. "Now I have got more than a watch on it (the economy). I hope I have got a grip on it."

On Vietnam, Mr. Wilson said the Government would dissociate itself from United States policy if he believed such a move would end the war "even a day earlier".

30 "We want to get the war over and we shall take whatever steps are necessary to play our part", he continued. "I think we came pretty close to it when Mr. Kosygin was here in February."

The Prime Minister said nothing would be gained by telling one side to stop killing if the other did not do so as well. "I believe the Americans should go, but you can only negotiate that withdrawal."

40 On Rhodesia, he said sanctions had had a very big effect on its economy. The British Government's policy had not succeeded, but that did not mean it would be right for them to surrender principles.

In the Appellate
Division of the
High Court of
Rhodesia

—
No.83

Annexure "A" to
the Affidavit of
Lardner-Burke
Press Report from
"The Times"
Dated 26th
September 1967
(Contd.)

TOUCH

The Prime Minister, who was appearing on 'Panorama,' warned of the difficulties of the next few months.

They would be "tough", "hard" and "difficult" - but he looked more optimistically at the early part of next year.

10 Asked about last week's by-election shocks, and whether they would affect Government policies, Mr. Wilson said; "I think it would be utterly wrong, having embarked on policies we believed to be right, to depart from them because of temporary unpopularity."

20 The Government he declared, were as deeply concerned about unemployment as the TUC - "but we don't get any alternative policies put forward for solving these problems, either at the Trades Union Congress or at the by-elections."

WASTED

Mr. Wilson said the level of unemployment which the Government expected this winter was "higher than acceptable to me and higher than acceptable to the Government".

30 But "to start spending money like water, to reflate irresponsibly" just now, when production was beginning to increase, would mean that "all the sacrifices and hardship might be thrown away and wasted."

He clashed with one of his interviewers. James Mossman, who suggested that the Government had no real moral concern about unemployment.

"It is moral concern," Mr. Wilson retorted sharply, "to see we do not plunge into one-and-a-half million unemployed as a result of irresponsible

In the Appellate Division of the High Court of Rhodesia

No.84

Annexure "B" to the Affidavit of Lardner-Burke Press Report from "The Sun" Dated 26th September 1967 (Contd.)

In the Appellate
Division of the
High Court of
Rhodesia

No.84

Annexure "B" to
the Affidavit of
Lardner-Burke
Press Report from
"The Sun"
Dated 26th
September 1967
(Contd.)

handling of the balance-of-payments position".

FAILURE

On Vietnam Mr. Wilson was more out-spoken than at any time in the past. He said that if it would help shorten the war by even a day he would dissociate the Government from the United States.

"Of course I disagree with the war", he declared. "I think it is one of the most murderous wars in history.

10

"But you won't end that war by dissociation. It is a bloody war. It is a war that should be settled.

"I am not going to condemn North Vietnam or the United States, because one day I want this Government to play their part to get them round the conference table."

On Rhodesia Mr. Wilson admitted that the Government's policy had failed in the sense that it had not ended the rebellion.

20

"Our policy has not succeeded," he said, "but that does not mean it would be right now to surrender the principles for which we stand."

NO. 85

ANNEXURE "C" TO THE AFFIDAVIT
OF LARDNER-BURKE - PRESS
REPORT - "FINANCIAL TIMES"

In the Appellate
Division of the
High Court of
Rhodesia

No.85

A DIFFICULT WINTER BUT NO PANIC MEASURES
SAYS WILSON.

Annexure "C" to
the Affidavit of
Lardner-Burke -
Press Report -
"Financial Times"
Dated 26th
September 1967

By John Bourne, Lobby Editor.

10 IN THE FIERCEST television grilling
he has received since becoming Prime
Minister, Mr. Harold Wilson last
night resolutely defended the Govern-
ment's present policies on the economy.
Rhodesia and Vietnam.

For 30 minutes he answered critical
questions - some of them very aggressive
on the B.B.C.'s Panorama programme. But
he refused to budge.

20 He said the Government was determined
to get the economy right but that, by
the spring, production should be moving
much faster. Dealing with last week's
massive Labour defeat at Walthamstow,
he said it would be wrong for the economy
if the Government were to play politics,
resort to gimmickry or to react to by-
election results in a way "which might
make you more popular in the short run."

MAIN POINTS

30 The Prime Minister's main points
were:-

1. The measures to get the economy
moving were still "working through"
and it would be a difficult winter for
unemployment.
2. For the first time he conceded
publicly that the Government's
Rhodesian policy had failed. "But
this does not mean we would be right
to sacrifice the principles for

ANNEXURE "D" TO AFFIDAVIT OF
LARDNER-BURKE - PRESS REPORT
"DAILY EXPRESS"

In the Appellate
Division of the
High Court of
Rhodesia

No.86

WILSON: A HARD WINTER AHEAD

By Wilfrid Sendall

Annexure "D" to
the Affidavit of
Lardner-Burke -
Press Report
"Daily Express"
Dated 26th
September 1967

It's going to be "a hard winter."
Mr. Harold Wilson warned last night.

10 He conceded that the level of un-
employment would be higher than was
acceptable to himself and the Government.

This was the result of the "tough
measures that had to be taken."

But the Prime Minister, who was
being questioned on the B.B.C. TV programme
"Panorama," insisted that it would be
wrong to panic into premature reflation.
"All the hardships would then have been
thrown away for nothing."

20 He declared that the country and
areas of heavy unemployment could expect
"a much more hopeful era."

Mr. Wilson heatedly denied that the
Government was "trying to work with a
permanent pool of unemployed."

And he said the Government would
not get the economy right by playing
politics or reacting to by-election
results.

30 The Prime Minister hit back at
his critics by saying that no altern-
ative policies had been put forward at
the T.U.C. or in the by-elections.

HOPEFUL

He said: "I think the economy
shows signs of being on the turn, and
I feel that is the view of many

In the Appellate
Division of the
High Court of
Rhodesia

No.86

Annexure "D" to
the Affidavit of
Lardner-Burke -
Press Report
"Daily Express"
Dated 26th
September 1967
(Contd.)

industrialists. But it is not moving fast enough to prevent the difficulties of this winter."

The increase in unemployment, Mr. Wilson said, was now moderating. The Government was hopeful of "a big increase in employment next year."

He claimed that the 1966 measures had "streamlined" industry. "But I recognise at a very heavy social price." 10

He explained that he had taken direct responsibility for economic affairs in order to have "a direct impact" on industry.

Mr. Wilson was also questioned on:-

VIETNAM: "If we could shorten the war by one day by dissociating from President Johnson's policy I would do it." The British Government's aim was to get people "round a table." 20

RHODESIA: Mr. Wilson agreed that the Government's policy was not succeeding, but that did not mean it would be "right to surrender the principles for which we stand."

He admitted that oil was going to Rhodesia through Lourenco Marques. "I would like to see some other countries doing something about it."

Questioned about his pledge that there would be no independence before majority rule. Mr. Wilson said: "We shall not dishonour any pledge we have made on Rhodesia." 30

'FASCISTS'

He added "I told the House of Commons when that pledge was made that if, of course, there was a substantial change of circumstances in

Rhodesia - I mean independence would not be handing over the country to a group, many of whom are Fascists, many of whom exercise through censorship and repression - then I would be prepared to go back to the Commonwealth to discuss the situation with them.

"But we are not at this moment anywhere near a solution on that ..."

10

A WORK TO RULE by members of the Association of Broadcasting Staff threatened to disrupt Mr. Wilson's interview last night - but the union told its members their instructions were "suspended to make allowance for the Premier's broadcast."

20

A WALK OUT of technical staff at Rediffusion's studios blacked out the start of "Coronation Street" on ITV's London network.

The programme, due to start at 7.30 was held up for 16 minutes while the men held a sudden union meeting. The serial's second part was shown.

A Rediffusion spokesman said the meeting was to decide what action to take in getting a shop claim for certain terminal payments when Rediffusion merges with A.B.C. next July.

In the Appellate Division of the High Court of Rhodesia

No.86

Annexure "D" to the Affidavit of Lardner-Burke - Press Report "Daily Express" Dated 26th September 1967 (Contd.)

In the Appellate
Division of the
High Court of
Rhodesia

NO.87

ANNEXURE "E" TO THE AFFIDAVIT
OF LARDNER-BURKE - PRESS REPORT
"THE RHODESIAN HERALD"

No.87

Annexure "E" to
the Affidavit of
Lardner-Burke
Press Report -
"The Rhodesian
Herald"
Dated 27th
September 1967

WILSON'S ADMISSION ON RHODESIA

THE RHODESIA HERALD, 27th September 1967

BRITISH POLICY HAS NOT SUCCEEDED BUT NO
SURRENDER ON PRINCIPLES

From Our Correspondent

London, Tuesday.

10

The British Government's policy on Rhodesia has not succeeded, Mr. Harold Wilson said on television last night. But that did not mean it would now be right to surrender the principles for which Britain and the Commonwealth as a whole stood, he said.

Asked on the "Panorama" programme whether he claimed any success for his Rhodesia policy, he said:

"In the sense of ending the rebellion, no. But what we've got here is a clear issue of principles that is too often forgotten in this country.

20

"The previous Government in this country laid down the principles on which any independence could be granted to Rhodesia and made it very clear. This Government has made it clear as well and this Government will not be a party to departing from those principles, even if it takes a very considerable time.

30

'BIG EFFECT'

"Our sanctions have had a very big effect on the economy of Rhodesia, though they have not yet enabled Mr. Smith, for example, to desert the policy he's taken,

which after Tiger last December he was ready to do - I'm convinced of that - until the racialist extremist group who call the tune there vetoed what I think he really wanted to do."

In the Appellate Division of the High Court of Rhodesia

No.87

10 Asked if it was true that British warships off the Portuguese African territories to prevent oil reaching Rhodesia had been taken away, Mr. Wilson said: "No. The surveyance has stopped the oil going through Beira."

Annexure "E" to the Affidavit of Lardner-Burke Press Report - "The Rhodesian Herald"
Dated 27th September 1967
(Contd.)

 Then he added: "There was no surveyance over Lourenco Marques. The Beira control is still on, but there are considerable quantities of oil going through Lourenco Marques into Rhodesia and I would like to see some of the other countries concerned do something about it."

20 The Prime Minister was then asked: "Can you hope to get any settlement of the Rhodesia problem which does not mean or would not involve dishonouring the pledge which you made to the House of Commons and the Commonwealth conference that there would be no independence before majority rule?"

PLEDGE STANDS

30 Mr. Wilson replied: "We shall not dishonour any pledge we have made on Rhodesia. It told the House of Commons, when that pledge was made, if, of course, there's a substantial change of circumstances in Rhodesia - meaning that independence would not be handing over the country to a group, many of whom are Fascists, many of whom exercise censorship and repression - then I would be prepared to go back to the Common-
40 wealth to discuss the situation with them.

 "But we are not at this moment anywhere near a solution on that. But we shall not break the pledge, the pledges

In the Appellate
Division of the
High Court of
Rhodesia

No.87

Annexure "E" to
the Affidavit of
Lardner-Burke
Press Report -
"The Rhodesian
Herald"
Dated 27th
September 1967
(Contd.)

we have given.

"We shall not go back on the principles that were laid down by successive Governments in Britain, because at the end of the day this Rhodesian issue is an issue of principles."

Asked finally whether the description "toothless bulldog" (used by the Zambian High Commissioner, Mr. Ali Simbule) was an unfair one of Britain, the Prime Minister said: "I would like to see a few other people, in Africa too, showing the same teeth as we have on this question."

299.

NO. 88

FURTHER AFFIDAVIT OF ARTHUR
LESLIE

In the Appellate
Division of the
High Court of
Rhodesia

No.88

Further Affidavit
of Arthur Leslie
Dated 30th
October 1967

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
in his capacity as Minister of Respondent
Justice and Law and Order

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of Gwelo Prison Second
Respondent

(2) LEO SOLOMON BARON Appellant

- and -

20 NORMAN AYRE First
in his capacity as the Officer Respondent
in Charge of Que Que Prison

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of Second
Prisons Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

30 DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

DESMOND WILLIAM LARDNER-BURKE Fifth
in his capacity as Minister of Respondent
Justice and Law and Order

In the Appellate
Division of the
High Court of
Rhodesia

FURTHER AFFIDAVIT

I, ARTHUR LESLIE, hereby make oath
and say:-

No.88
Further Affidavit
of Arthur Leslie
Dated 30th
October 1967
(Contd.)

1. I am the Secretary for Transport and Power and have already sworn an affidavit in this case on the 3rd October, 1967 (hereinafter referred to as "my earlier affidavit").
2. In regard to paragraph 5 of the affidavit sworn in this case on the 13th October, 1967 by Sir Leslie Monson, I deny that the account given by me in my earlier affidavit is misleading. Neither Sir Leslie Monson nor any other representative of the British Government was present at any of the meetings, referred to in my earlier affidavit, dealing with the break-up of the unitary railway system or the unitary airways system. It is submitted, therefore, that Sir Leslie Monson is in no position to explain to this Honourable Court the circumstances in which these meetings took place. 10
3. More particularly, in regard to the allegation that it is not true that the Government of Zambia and the Government of Malawi have concluded agreements with "the present regime in Southern Rhodesia, as the Government of Southern Rhodesia" for the termination of the unitary railway system and the unitary airways system, I state that throughout the negotiations with the Governments of Zambia and Malawi it has been made quite clear by me to the representatives of those Governments that I and my fellow delegates represented the present Government of Rhodesia. By the present Government of Rhodesia I mean the only effective Government of Rhodesia, namely the Government constituted 30
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under the Constitution of Rhodesia, 1965. On numerous occasions during the negotiations it has been necessary for me to refer matters which have arisen to my Minister, Brigadier Andrew Dunlop, and I have informed the Zambian representatives accordingly. They have been equally candid in saying so when they have had to refer matters to their Ministers. The same applies to negotiations in which representatives of the Government of Malawi have been involved. While it is true that the Ministers of the Governments concerned were not present at the meetings of officials, it was manifest that the officials of all sides were acting on the instructions of their Governments and frequently referred matters to their Ministers for decision and that the Ministers and the Governments which they represented were in this way parties to the negotiations and to the agreements which resulted. In fact, the Government of Zambia has publicly made it clear that it appreciated that it was negotiating with the present Government of Rhodesia. In The Daily Telegraph of the 14th November, 1966 the following report appeared -

"KAUNDA GIVES BRITAIN RAIL
ULTIMATUM

President Kaunda of Zambia said in Lusaka today that he would have to negotiate with the 'rebel regime' in Rhodesia on the break-up of the Rhodesia-Zambia railway system if Britain was not prepared to do so. He would give Britain seven days to tell Zambia whether she would act."

A similar report appeared in The Times of the same date under the heading -

In the Appellate
Division of the
High Court of
Rhodesia

No.88

Further Affidavit
of Arthur Leslie
Dated 30th
October 1967
(Contd.)

In the Appellate
Division of the
High Court of
Rhodesia

No.88

Further Affidavit
of Arthur Leslie
Dated 30th
October 1967
(Contd.)

"ZAMBIA THREATS TO DEAL WITH
MR. SMITH

President Kaunda said today that he had given Britain seven days to negotiate on behalf of Rhodesia the dissolution of the railway system jointly owned by Zambia and Rhodesia. 'If the British Government is not prepared to negotiate the break-up of the railways with us, we may be obliged to negotiate directly with the rebel regime in Rhodesia, unpalatable as that would be, in order to secure Zambia's interests and assets in the common service.'

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On the 23rd November, 1966 the following report appeared in the Bulawayo Chronicle -

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"'Zambia is to begin negotiations with the Rhodesian Government for the break-up of the Rhodesia Railways' the Zambian Transport Minister, Mr. Dingiswayo Banda, said today."

I am satisfied that these newspaper reports are accurate because on the 23rd March, 1967, in the course of a telephone conversation with me, Mr. Kashita, the then Permanent Secretary to the Ministry of Transport, Power and Communications in the Zambian Government, stated -

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"President Kaunda has carried out to the letter his ultimatum on the break-up of the Rhodesia Railways. He had warned the British Government on the 13th November, 1966 on his departure for the 7-Nation Tour that unless the Wilson Government appointed within seven days lawful representatives to represent Rhodesia on the Higher

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Authority with whom Zambia would discuss the mechanics of the dissolution, he would have no alternative but to negotiate directly with the Salisbury regime. As the British response to the ultimatum was unhelpful and at best obstructive, negotiations between Zambian and Rhodesian officials relating to the dissolution of the railways have therefore commenced."

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Dated 30th
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(Contd.)

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This statement, of which a verbatim note was taken at the time, was accepted as the basis for announcements to be issued by the Rhodesian and Zambian Governments in connection with the dissolution negotiations. Accordingly I state that whatever devices may have been resorted to in order to avoid actual recognition of the present Government of Rhodesia, the Zambian Government has knowingly negotiated and concluded agreements with "the present regime in Southern Rhodesia, as the Government of Southern Rhodesia". To say that the Governments of Zambia and Malawi have not concluded agreements with "the present regime in Southern Rhodesia, as the Government of Southern Rhodesia" is to use a form of words which, it is submitted, bears no relation to the true facts.

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4. It is a fact that the unitary railway system ceased to operate as such on the 30th June, 1967 and that Zambia and Rhodesia have each operated their own independent railway corporations with effect from the 1st July, 1967. Similarly Rhodesia, Malawi and Zambia have each established their own independent airlines with effect from the 1st September, 1967 and the operations of the unitary Central African Airways Corporation after that date have been curtailed with the remaining services being operated for

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the benefit of the national airlines concerned. It has been accepted that Central African Airways will cease to operate any services on the 31st December, 1967.

5. In connection with the dissolution of the unitary railway system, the Zambian Railways Act No. 47 of 1967 establishes the Zambian Railways and Zambian statutory instrument No. 271 of 1967 provides for the transfer of staff from the former unitary system to the new Zambian Railways and to the new Rhodesia Railways. There are obvious similarities between this statutory instrument and Rhodesia Government Notice No. 457 of 1967, which provides for similar matters in Rhodesia. 10
6. In regard to the independent national airlines, the Zambian Airways Corporation was established by Zambian Act No. 48 of 1967. In terms of that Act regulations were made and published in statutory instrument No. 301 of 1967, which provided for the functions and powers of Central African Airways on and after the 1st September, 1967. It is significant that section 3 of that statutory instrument is virtually identical to section 3 of Rhodesia Government Notice No. 670 of 1967 which also provides for the functions and powers of Central African Airways in so far as the Rhodesian Government is concerned, and that both sets of regulations were published on the same day, viz. the 1st September 1967. 30
7. That there would be enacted in Zambia and Rhodesia the legislation already referred to was the result of agreement by the parties and it was clear that 40

the Zambian and the Malawian delegates knew and fully appreciated that the necessary legislation for Rhodesia would be enacted by the Legislature constituted under the Constitution of Rhodesia, 1965 and not by any other legislature.

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- 10 8. In regard to Sir Leslie Monson's statement that the true status of officials in Rhodesia is that they remain the servants of a government headed by Sir Humphrey Gibbs, I deny that I have at any relevant time been the servant or representative of any government other than the present Government of Rhodesia. I have never at any relevant time received directions or instructions from the British Government or from Sir Humphrey Gibbs in connection with the holding of "technical discussions" or any other directions or instructions from those sources. Any such directions or instructions would in any case have been ignored.
- 20
- 30 9. Sir Leslie Monson's suggestion that the negotiations which I have described are merely technical discussions is not supported by the facts which are that the unitary railway system has already ceased operating and that the unitary airways system will cease operating at the end of this year.
- 40 10. Sir Leslie Monson's statement that "Her Majesty's Government in the United Kingdom agreed that when these negotiations and discussions at an official level were completed and if they resulted in an agreement at that level which was approved by the Government of Zambia and by Her Majesty's Government in the United Kingdom, the question of action to be taken

FURTHER AFFIDAVIT OF DAVID
WATSON YOUNG

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No.89

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

Further Affidavit
of David Watson
Young
Dated 30th
October 1967

IN THE MATTERS between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend- Second
ent of Gwelo Prison Respondent

(2) LEO SOLOMON BARON Appellant

- and -

20 NORMAN AYRE
in his capacity as the Officer First
in Charge of Que Que Prison Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of Second
Prisons Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
alternatively Respondent

30 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of Fifth
Justice and Law and Order Respondent

In the Appellate
Division of the
High Court of
Rhodesia

FURTHER AFFIDAVIT

I, DAVID WATSON YOUNG, hereby make
oath and say:-

No.89
Further Affidavit
of David Watson
Young
Dated 30th
October 1967
(Contd.)

1. I am the Secretary to the Treasury and have previously sworn an affidavit in this case on the 26th September 1967 (hereinafter referred to as "my earlier affidavit").
2. I have read the affidavit sworn in this case on the 11th October, 1967 by Sir Leslie Monson. 10
3. In paragraph 3 of his affidavit Sir Leslie Monson states that while the policy of economic sanctions has not yet succeeded in causing the ending of the present Government in Rhodesia, nevertheless that policy has had, and is having, a considerable impact on the Rhodesian economy. In my earlier affidavit I did not deny that sanctions had had an impact on the Rhodesian economy. It is submitted, however, that the basic issue is whether the sanctions policy will cripple the economy to the point of bringing to an end the present Government in Rhodesia. Sir Leslie Monson fails to examine this issue and comes to no precise conclusions about it. He merely makes a general statement that the assertions contained in paragraphs 7 to 10 of my earlier affidavit are inaccurate and that the effect of the mandatory economic sanctions imposed by the Security Council of the United Nations should become increasingly effective with the passage of time. 20
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4. I stated in my earlier affidavit that the measures taken against Rhodesia had failed to cripple or destroy the economy of Rhodesia, 40

that Rhodesia had successfully survived all the economic measures which had been applied against her, that there was every indication that Rhodesia would continue to survive these measures and that the present economic expansion and development would continue. I adhere to these statements and comment below on the various points made by Sir Leslie Monson in paragraphs 6 to 8 of his affidavit.

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5. Sir Leslie Monson alleges that the statistics which I quoted are highly selective and misleading. I deny this allegation. The effects of sanctions upon the economy must be considered as a whole and in conjunction with the effects of the countermeasures taken by Rhodesia. Many of the statistics which I quoted are therefore of a global nature. For example I referred to the Gross National Product for 1966. I compared this figure with the Gross National Product for 1965 and 1964 and I gave an assessment of the Gross National Product for 1967. I therefore deny the allegation that the statistics quoted by me are highly selective and misleading. Indeed, it is Sir Leslie Monson's use of statistics which is selective and misleading, as I shall explain subsequently in this affidavit.
6. Sir Leslie Monson says that no quarterly trade statistics have been published in 1967. This is so; while sanctions are being applied, it is considered that it would be unwise to reveal such information. However, the fact that those statistics have not been published in no way detracts from the fact that in the first eight months of 1967 it was possible to sustain

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a level of imports some 20 per cent higher than in the corresponding period of 1966.

7. Sir Leslie Monson quotes export and import figures in 1966 compared with 1965. These figures were revealed in the economic survey of Rhodesia for 1966. It is significant that the reduction in exports from £165 million in 1965 to £105 million in 1966 - a reduction of over 35 per cent - resulted in a decline of only 1.9 per cent in the Gross National Product. I would concede that a reduction in exports of this magnitude might be expected to cripple an economy if no counter-measures were taken, but the counter-measures adopted by the Rhodesian Government have prevented this from happening. 10
8. Sir Leslie Monson asserts that Rhodesia has so far been able to balance its budget because it has resorted to disowning its overseas debt and to using the country's savings to meet the cost of sanctions. This is incorrect. With regard to the budget, Sir Leslie Monson fails to mention that the only debt which has not been serviced by Rhodesia is debt due to the British Government and British Government agencies, debt under British Government guarantee and London Market debt (collectively hereinafter referred to as "the British debt"), except for that part held by residents of Rhodesia, Malawi and South Africa purchased on or before the 4th December, 1965. Payments on all other debt, both external and internal, have been, and are being, made. Even if payments on the British debt had not been suspended it would still have been possible to balance the budget without serious difficulty, had this been desired. If service payments on this debt had been maintained 20 30 40

the Revenue Account surplus of £5.3 million at 30th June, 1967, would have become a deficit of £1.6 million. In any case the suspension of payments on this debt was simply one of the retaliatory measures taken by Rhodesia against Britain and was not related to budgetary considerations.

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9. The use of savings to stockpile certain commodities was also not related to budgetary considerations but was one of the countermeasures adopted by Rhodesia to maintain the economy during a period of enforced, but successful, readjustment in economic activity. The fact that savings were available for this purpose reflects the strength of the economy rather than a weakness. The reference to the borrowing of £35½ million by Treasury Bills is meaningless. The level of borrowings against Treasury Bills fluctuates; the amounts offered for tender are determined not only by the short term requirements of funds by the Treasury but also, inter alia, by money market considerations and, as is generally well known, by the need to provide temporary investment outlets to assist in securing an orderly and properly regulated monetary system.

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10. Sir Leslie Monson states that in paragraph 9 of my earlier affidavit I did not take into account the natural increase in the population or the normal annual increase in the Gross Domestic Product which on average, he claims, was 6 per cent before the assumption of independence.

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Young
Dated 30th
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(Contd.)

Here again his remarks are not relevant to the main issue which I was discussing in my paragraph 9. In that paragraph I showed that the measures taken against Rhodesia had failed to cripple or destroy the economy of Rhodesia. I admitted that there was a fall of 1.9 per cent in the Gross National Product in 1966 but pointed out that the present assessment for 1967 was that the National Product would be higher than in 1966 and may possibly exceed the 1965 figure. These figures demonstrated that the Rhodesian economy was not crippled and that after a setback in 1966 economic growth was resumed. I would point out in addition that the reduction in the Gross National Product in 1966 was very largely at the expense of the profits of companies, many of whom are based in Britain. Personal incomes, employment and real wages were generally maintained. There was a fall of 9,000 in employment of Africans, almost entirely due to reduced employment in agriculture, but this was less than the net emigration of non-Rhodesian Africans, indicating an increase in the employment of Rhodesian Africans.

11. Sir Leslie Monson says that another factor which is not reflected is the net build-up of £22.8 million in stocks. It is true that there has been a substantial increase in stocks, mainly in tobacco. The continued production of tobacco, despite the temporary loss of certain export markets, has been one of the means whereby it has been possible to offset the effect of sanctions on the economy. It has been possible to finance the increase in stocks entirely from savings and this, as I have indicated in paragraph 9 above, is a reflection of the economy's strength and resilience.

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12. I agree that it is desirable for the economy to grow at a faster rate than the natural increase in the population. I also agree that if the sanctions policy had not been applied the Gross Domestic Product in 1966 would have been higher than was the case. I cannot accept that it could possibly have been some 15 per cent higher, as suggested by Sir Leslie Monson, and consider that eight per cent would be a realistic estimate. In any case, as previously stated, whatever the figure may be it is immaterial to the point under discussion.

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13. Sir Leslie Monson draws attention to the closure of the oil refinery at Feruka, the reduction of the target for next year's tobacco crop, the closure of Rhodesia's motor vehicle assembly plants, the financial position of the sugar industry and the fact that Rhodesia Railways is operating at a loss. These highly selective statements ignore the off-setting effects of new development such as the current and impending investment of some £15 million in the nickel mining industry, new investment in other mining activities, the 405 new industrial projects which have been approved since the 11th November, 1965, of which 381 are already in production, and diversification in the agricultural industry. I reiterate therefore that in assessing the likely effect of sanctions it is necessary to examine the whole of the economy and not merely the adverse features.

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14. Sir Leslie Monson ends with the statement that the effect of the mandatory economic sanctions imposed by the Security Council of the United Nations should become

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Young
Dated 30th
October 1967
(Contd.)

increasingly effective with the
passage of time. I dispute this
statement for the following
reasons -

- (a) There were signs both towards
the end of 1966 and in the
first eight months of 1967 of
a substantial improvement in
economic activity. There is no
sign of a reversal of this trend
despite the fact that the
United Nations' mandatory
sanctions have been in force
for over 10 months. This trend
is in accordance with the
experience of the sanctions
imposed before December, 1966,
which also became less and
not more effective with
the passage of time; 10
- (b) The effects of sanctions
on the Rhodesian economy have
been consistently overestimated
in British official quarters.
For example, according to
the final communique issued
at the meeting of the Common-
wealth Prime Ministers at
Lagos in January, 1966 30
"the Prime Ministers noted
the statement by the British
Prime Minister that on the
expert advice available to
him the cumulative effects
of the economic and financial
sanctions might well bring
the rebellion to an end
within a matter of weeks rather
than months". More recently
in October, 1967 the British 40
Minister of State for
Commonwealth Relations is
reported to have claimed
presumably on official advice,
that Rhodesia's external trade
would be further reduced to
about £60 million in 1967,
whereas in fact the figure
of £60 million had already

been substantially surpassed when the claim was made;

- (c) Most economic and financial authorities, including impartial authorities in Britain, have agreed that economic sanctions cannot and will not prove effective. In support of this statement I would respectfully draw the attention of this Honourable Court to the appendices. Appendix A is a document, published in Britain by the Institute of Economic Affairs and entitled "Economic Sanctions and Rhodesia", the authors of which are Messrs. Curtin and Murray of York University. They conclude their paper with the words -

"We are tempted to conclude that time is the most valuable commodity the Smith Regime has at its disposal."

Mr. Curtin is the same Timothy Curtin who swore affidavits in these cases on the 27th May, 1966. It will be noted from Appendix A that Mr. Curtin now seems to be of a different opinion from that expressed in his earlier affidavits.

Appendix B contains other examples of assessments by independent observers of the effects of sanctions. These assessments do not indicate that sanctions are likely to cripple the economy to the point of bringing to an end the present Government in Rhodesia, nor that the effect of the mandatory economic

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Further Affidavit
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Young
Dated 30th
October 1967
(Contd.)

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Division of the
High Court of
Rhodesia

sanctions imposed by the
Security Council of the United
Nations should become increasingly
effective with the passage of
time.

No.89

Further Affidavit
of David Watson
Young
Dated 30th
October 1967
(Contd.)

SWORN TO at SALISBURY this 30th
day of October 1967.

(Sgd) D.W. Young

BEFORE ME,

(Sgd) V. Barnes Pope

Commissioner of Oaths.

10

NO.90

SUPPLEMENTARY AFFIDAVIT OF
DAVID WATSON YOUNG

In the Appellate
Division of the
High Court of
Rhodesia

No.90

Supplementary
Affidavit of David
Watson Young
Dated 8th
November 1967

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

IN THE MATTER between:

(1) STELLA MADZIMBAMUTO Appellant

- and -

10 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of Gwelo Prison Second
Respondent

(2) LEO SOLOMON BARON Appellant

- and -

20 NORMAN AYRE
in his capacity as the Officer
in Charge of Que Que Prison First
Respondent

- and -

HENDRIK STEPHANUS BEZUIDENHOUT
in his capacity as Director of
Prisons Second
Respondent

- and -

CLIFFORD WALTER DUPONT Third
Respondent

- and -

DESMOND WILLIAM LARDNER-BURKE Fourth
Respondent
alternatively

30 DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and Law and Order Fifth
Respondent

In the Appellate
Division of the
High Court of
Rhodesia

SUPPLEMENTARY AFFIDAVIT

I, DAVID WATSON YOUNG, hereby make
oath and say:-

No.90
Supplementary
Affidavit of David
Watson Young
Dated 8th
November 1967
(Contd.)

1. On the 30th October, 1967, I signed
an affidavit in which I replied to
various allegations made by Sir Leslie
Monson in his affidavit dated 13th
October, 1967.

2. In the last sentence of sub-paragraph
(b) of paragraph 14 of my said
affidavit I stated:-

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"More recently in October, 1967
the British Minister of State
for Commonwealth Relations is
reported to have claimed,
presumably on official advice,
that Rhodesia's external trade
would be further reduced to about
£60 million in 1967, whereas in
fact the figure of £60 million
had already been substantially
surpassed when the claim was
made;"

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3. In making the statement referred to
in paragraph 2 hereof I relied on
certain press reports copies whereof
are annexed hereto and marked 'A' and
'B'.

SWORN TO at SALISBURY this 8th
day of November, 1967

30

(Sgd) D.W. Young

BEFORE ME,

(Sgd) V. Barnes Pope

Commissioner of Oaths.

319.

NO. 91

ANNEXURE "A" TO THE SUPPLEMENTARY AFFIDAVIT OF YOUNG

EXTRACT FROM THE RHODESIA HERALD AT THE
13.10.67

R.H. 13/10/67

SANCTIONS ARE BITING EXTERNAL TRADE VERY
SEVERELY - THOMAS

Johannesburg,
Thursday.

10

The new British Minister of State for Commonwealth Relations, Mr. George Thomas, said at Jan Smuts Airport on his departure for London tonight that the British Government would continue to impose sanctions on Rhodesia until the political results his Government desired had been achieved. "The British Government takes no joy in trying to damage the economy of Rhodesia, but since the use of force has been rejected as a resolution of the problem, Britain has been forced to resort to sanctions."

20

Mr. Thomas said there could be no doubt that sanctions were biting Rhodesia's external trade very severely. Her external trade had been reduced from £140m. a year to £90m. a year and this year would be further reduced to about £60m.

30

"I know that there are not many evidences within Rhodesia about the effects of sanctions, but the people dealing with Rhodesia's external trade must be very worried men, and the sooner an honourable solution is reached, the better it would be for both Rhodesia and the United Kingdom.

MAJORITY RULE

"There is no question at all and never

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Rhodesia

No.91

Annexure "A" to
the Supplementary
Affidavit of
Young
Dated 13th
October 1967

In the Appellate
Division of the
High Court of
Rhodesia

No. 91

Annexure "A" to
the Supple-
mentary Affidavit
of Young
Dated 13th
October 1967
(Contd.)

has been of Great Britain seeking immediate majority rule in Rhodesia".

Mr. Thomas said that Sir Humphrey Gibbs had gained the tremendous admiration of the British people for the lone stand he was taking.

Asked about his talks with African leaders, Mr. Thomas said that all four countries he had visited had adopted a realistic attitude in their relations with South Africa.

10

Although African Governments disliked South Africa's policy of apartheid, he had detected a high sense of responsibility on their part over their relations with the Republic - Iano.

321.

NO. 92

ANNEXURE "B" TO THE SUPPLEMENTARY
AFFIDAVIT OF YOUNG

In the Appellate
Division of the
High Court of
Rhodesia

EXTRACT FROM THE LAND DAILY MAIL AT THE
31st OCTOBER 1967

No.92

NO JOY IN CURBS, SAYS THOMAS

Annexure "B"
to the
Supplementary
Affidavit of
Young
Dated 31st
October 1967

Staff Reporter.

10 The British Government would continue with sanctions against Rhodesia until the political results it desired were achieved, the Minister of State for Commonwealth Relations, Mr. George Thomas, said in Johannesburg last night.

"But we take no pleasure at all in the world pressure on Rhodesia, because the aim of our policy is a prosperous Rhodesia where the gifts of all her people can find expression and where they can all enjoy full civil rights," he said.

20 Mr. Thomas was talking at Jan Smuts Airport before his departure to London after visiting Malawi, Botswana, Swaziland and Lesotho.

He said sanctions were not failing. They had reduced Rhodesia's external trade from R.280m a year to R.160m. a year.

30 Britain had given independence to 700 million people in the world - 80 million of them in Africa - in the past 20 years and had always acted on the basis of principle.

Asked about the establishment of diplomatic representation between South Africa and some African states, Mr. Thomas said "I think we're on the verge of a new era in international relationships."

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Division of the
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NO.94
I N D E X

IN THE APPELLATE DIVISION
OF THE HIGH COURT OF RHODESIA

In the matter of the application of -

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE

First
Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

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I N D E X

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NO. 95
NOTICE OF MOTION

In the Appellate
Division of the
High Court of
Rhodesia

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA

No.95

In the matter of the application of

Notice of Motion

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE

First
Respondent

- and -

10

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

NOTICE OF MOTION

TAKE NOTICE that STELLA MADZIMBAMUTO
(hereinafter referred to as "the Applicant")
intends to make application to the
Appellate Division of the High Court at
Salisbury at a time and on a date to be
fixed by the Registrar for an order in
terms of the draft order annexed hereto
and that the accompanying affidavits will
be used in support thereof.

20

FURTHER take notice that if you
intend to oppose this application you are
required to notify the Applicant's
Attorneys in writing on or before the
22nd day of February, 1968, and to file
your affidavits with the Registrar of
the Court at Salisbury on or before the
22nd day of February, 1968.

30

SHOULD you fail to give due
notice of intention to oppose, or
should you fail duly to file your
affidavits, you may render yourself
liable for any extra costs incurred

324.

In the Appellate
Division of the
High Court of
Rhodesia

No.95

Notice of Motion

by the Applicant by reason of such
failure.

DATED at SALISBURY this
day of 1968.

SCANLEN & HOLDERNESS,
Applicant's Attorneys,
Barclays Bank Building,
Manica Road, Salisbury.

(which is the Applicant's address
for service)

10

To: The Registrar of the Appellate
Division of the High Court, Salisbury

And to: The Government Attorney,
Respondents' Attorney,
Lonrho House,
Union Avenue,
Salisbury.

AFFIDAVIT OF STELLA
MADZIMBAMUTO

In the Appellate
Division of the
High Court of
Rhodesia

IN THE APPELLATE DIVISION OF THE
HIGH COURT OF RHODESIA

No.96

In the matter of the application of

Affidavit of
Stella
Madzimbamuto
Dated 19th
February 1968

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten-
dent of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, STELLA MADZIMBAMUTO, hereby make
oath and say:-

1. I am the applicant in the above
matter, of Harari Central Hospital,
Salisbury.

20

2. By notice of motion dated 24th
February, 1966 I applied to the
General Division for an order requiring
the respondents to produce my husband,
DANIEL NYAMAYARO MADZIMBAMUTO (who
was then detained in Gwelo Prison),
before that Honourable Court on a
day to be fixed by the Court in
order that the Court might discharge
him from custody and detention and
set him at liberty. Subsequently
the order which I sought was amended
to an order setting aside the
order for the detention of my
husband in the Gwelo Prison.

30

3. In my affidavit annexed to the said
notice of motion I submitted that

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Madzimbamuto
Dated 19th
February 1968
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- the detention of my husband, purportedly in terms of the Emergency Powers (Maintenance of Law and Order) Regulations, 1966, was unlawful, the said regulations being of no force and effect in that no valid proclamation of emergency under the Emergency Powers Act (Chapter 33) was then in force. 10
4. On 9th September, 1966 my said application was dismissed, with no order as to costs.
5. On 23rd September, 1966, I noted an appeal to this Honourable Court against the said judgment of the General Division.
6. It was the substance of my application and appeal that the provisions of section 58 of the Constitution, 1961 had been contravened in relation to my husband, in that the purported proclamation of emergency and the Emergency Powers (Maintenance of Law and Order) Regulations made in terms thereof were of no force and effect because Clifford Walter Dupont who made them and who purported to be "The Officer Administering the Government" by virtue of "The Constitution of Rhodesia, 1965" was not the Governor in terms of the Constitution and had no legal powers. 20
7. On 29th January, 1968 this Honourable Court allowed my appeal with costs, both in this court and the court below, and altered the order of the General Division to read, "The continued detention of Daniel Madzimbamuto under Regulation 47(3) of the various Emergency Powers (Maintenance of Law and Order) Regulations was 30
- 40

and is unlawful." The basis of the said order was that the said Regulation 47(3) was ultra vires the Emergency Powers Act (Chapter 33), which was an alternative ground of relief on which I relied after the point was raised by this Honourable Court.

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No.96

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Madzimbamuto
Dated 19th
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(Contd.)

- 10 8. With regard to the substance of my application referred to in paragraph 6 hereof this Honourable Court held that the various proclamations of emergency and regulations (other than Regulation 47(3) and any other regulation subject to the same criticism) made by the said Clifford Walter Dupont were lawfully made.
- 20 9. In the premises the substantial question which I raised, namely whether the provisions of section 58 of the Constitution had been contravened in relation to my husband in that the said proclamations of emergency and regulations were unlawful, has been determined by this Honourable Court against me and my husband.
- 30 10. In his affidavit (at pages 9 and 10 of the Appeal Record) the first respondent asserted that in his opinion the continued detention of my husband was necessary and expedient in the public interest. The effect of the determination of this Honourable Court is that the first respondent is entitled to give effect to that opinion by ordering my husband's detention in terms of the present proclamation of emergency and Emergency Powers (Maintenance of Law and Order) Regulations made by the said Clifford Walter Dupont. Had the question referred to in paragraph 9 hereof
- 40

In the Appellate
Division of the
High Court of
Rhodesia

No.96

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Stella
Madzimbamuto
Dated 19th
February 1968
(Contd.)

- been determined in my favour it would have meant that there was no power lawfully to detain my husband.
11. On 29th January, 1968, after this Honourable Court had delivered its said judgment, the first respondent in terms of the present Emergency Powers (Maintenance of Law and Order) Regulations ordered the further detention of my husband in Gwelo Prison and he is so detained, as appears from his affidavit annexed hereto. 10
12. In the premises I respectfully submit that I and my husband are persons aggrieved by the determination of this Honourable Court that section 58 of the Constitution was not contravened in relation to my husband as aforesaid, and that accordingly I am entitled to appeal against the said determination to Her Majesty in Council in terms of section 71(5) of the Constitution, which I desire to do. 20
13. As will appear from his affidavit annexed hereto my husband associates himself with the prior proceedings herein, with this application and with my desire to appeal to Her Majesty in Council. 30

WHEREFORE I pray for an order in terms of the draft annexed hereto marked "A".

SWORN to at SALISBURY on this the 19th day of February 1968.

(Sgd) S. Nyamayaro Madzimbamuto

Before me,

(Sgd) G.E. King
Commissioner of Oaths.

In the Appellate
Division of the
High Court of
Rhodesia

No. 97

Draft Order
(Contd.)

under the various Proclamations
made by Clifford Walter Dupont
purporting to act in terms of
the Emergency Powers Act
(Chapter 33).

- (b) That the said Proclamations were
lawful and valid and that the
said Regulations (save for
Regulation 47 thereof) were valid
and gave power to the First
Respondent to detain the said
Madzimbamuto. 10
- (c) That the said Clifford Walter
Dupont in his capacity as Officer
Administering the Government in
terms of the document known as
the Constitution of Rhodesia,
1965, and the Executive Council
appointed by him under the said
Constitution including the First
Respondent were entitled to
exercise lawful executive power
in Rhodesia including the power
to make orders of detention against
the said Madzimbamuto. 20
2. That any costs of this application arising
from opposition thereto by the Respondents
be paid by the Respondents.
-

AFFIDAVIT OF DANIEL
NYAMAYARO MADZIMBAMUTO

In the Appellate
Division of the
High Court of
Rhodesia

No. 98

IN THE HIGH COURT OF RHODESIA
(APPELLATE DIVISION)

Affidavit of
Daniel Nyamayaro
Madzimbamuto
Dated 17th
February 1968

In the matter between:

STELLA MADZIMBAMUTO Applicant

- and -

10 DESMOND WILLIAM LARDNER-BURKE First
Respondent

- and -

FREDERICK PHILLIP GORDON
in his capacity as Superin- Second
Respondent
tendent of Gwelo Prison

AFFIDAVIT

I, DANIEL NYAMAYARO MADZIMBAMUTO, of
Gwelo Prison, Gwelo, make oath and say
that:-

- 20 1. I am the husband of the above named
Applicant.
- 30 2. Subsequent to the institution of
proceedings by the Applicant in the
General Division of the High Court
for my release from detention I was
made aware of the proceedings and
the said proceedings continued in
the General Division and in the
Appellate Division with my approval.
In so far as it may be necessary
I hereby formally ratify the
Applicant's actions in bringing her
application in the General Division,
in prosecuting the appeal to the
Appellate Division and in making
the present application for leave
to appeal to Her Majesty in Council.

In the Appellate
Division of the
High Court of
Rhodesia

No.98

Affidavit of
Daniel Nyamayaro
Madzimbamuto
Dated 17th
February 1968
(Contd.)

3. If this Honourable Court should deem it necessary or proper I am willing to be substituted on the record of the case as Applicant and Appellant.

4. Since the 6th November, 1965, I have been under detention at Gwelo Prison in consequence of a detention order issued against me by the First Respondent (except for the period 14th March, 1966 until 9th September, 1966 when on the order of the General Division and pending my wife's application I was in restriction in the Gonakudzingwa Restriction Area). I am still in detention at Gwelo Prison. On the 29th day of January 1968, after the Judgment of the above Honourable Court on the 29th January, 1968, a new order for my detention was made by the First Respondent purporting to act under Regulation 21 issued under the so-called Emergency Powers (Maintenance of Law and Order) Regulations, 1968. At no time after the said Judgment of the above Honourable Court was I released. 10
20

5. I consider and I respectfully submit that I and my wife are persons aggrieved by the determination of the above Honourable Court in its said Judgment respecting my constitutional rights under section 58 of the Constitution of Rhodesia, 1961. I desire an appeal to be brought against the said determination to Her Majesty in Council. 30

SWORN to at GWELO on this the 17th day of February 1968.

(Sgd) D.N. Madzimbamuto 40

Before me,

(Sgd) ? D.C.

Commissioner of Oaths.

333.

NO. 99

NOTICE OF HEARING

IN THE APPELLATE DIVISION
OF THE HIGH COURT OF RHODESIA

In the Appellate
Division of the
High Court of
Rhodesia

No.99

Civil Application No. A.D. 151 of 1968.

Notice of Hearing
Dated 21st
February 1968

B E T W E E N:

STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten- Second
dent of the Gwelo Prison Respondent

NOTICE OF HEARING

TAKE NOTICE that the above appli-
cation will be heard and determined by the
Appellate Division of the High Court of
Rhodesia at Salisbury on Monday the 26th
day of February, 1968, at 9.30 o'clock
in the forenoon or so soon thereafter as
Counsel may be heard.

20

This application is one of Two
matters set down for the time and date
mentioned and it is second on the roll.

Dated at SALISBURY this 21st day
of February, 1968.

J.T.T. Gyles

Registrar.

To: Messrs. Scanlen and Holderness,
Applicant's Attorneys,
Barclays Bank Building,
Manica Road, Salisbury.

30

GOVERNMENT ATTORNEY, SALISBURY.

334.

In the Appellate
Division of the
High Court of
Rhodesia

NO.100

AFFIDAVIT OF IAN DOUGLAS
SMITH

No.100

Affidavit of
Ian Douglas
Smith
Dated 28th
February 1968

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA

In the matter of the application of

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintendent
of the Gwelo Prison

Second
Respondent

AFFIDAVIT

I, IAN DOUGLAS SMITH, do hereby make
oath and say -

1. I am the Prime Minister of the Government
of Rhodesia. 20
2. I have read the affidavit of the
Honourable the Minister of Justice and
of Law and Order, DESMOND WILLIAM
LARDNER-BURKE, dated the 28th February
1968 and confirm the contents thereof
and that the decisions were taken in
the terms set out in the notice
accompanying that affidavit.

SWORN TO at SALISBURY this 28th
day of February, 1968. 30

(Sgd) I. Douglas Smith

Before me,

(Sgd) R. Staffwood

Commissioner of Oaths.

NO.101

AFFIDAVIT OF DESMOND
WILLIAM LARDNER-BURKE

In the Appellate
Division of the
High Court of
Rhodesia

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA

No.101

In the matter of the application of

Affidavit of
Desmond William
Lardner-Burke
Dated 28th
February 1968

STELLA MADZIMBAMUTO

Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of
Justice and of Law and Order

First
Respondent

10

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superintend-
ent of the Gweilo Prison

Second
Respondent

AFFIDAVIT

I, DESMOND WILLIAM LARDNER-BURKE
do hereby make oath and say -

1. I am the Minister of Justice and of
Law and Order in the Government of
Rhodesia and the person cited as
First Respondent in these proceedings.

20

2. I was present when the decisions set
out in the accompanying notice were
taken by that Government and I
participated in the taking of those
decisions.

3. After such decisions were taken I
was requested by the Government, as
the Minister primarily concerned, to
make these decisions known to your
Lordships. I respectfully wish to
inform your Lordships on behalf of
the Government of Rhodesia accordingly
and attach hereto a statement of

30

NO. 102

ANNEXURE THERETO:
STATEMENT BY THE MINISTER
OF JUSTICE AND OF LAW AND
ORDER

In the Appellate
Division of the
High Court of
Rhodesia

No.102

TO THE HONOURABLE THE JUDGES OF THE
APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA

Annexure thereto:
Statement by the
Minister of
Justice and of
Law and Order

- 10 1. The Constitution of Rhodesia
1965, by and under which the Govern-
ment of Rhodesia governs this
country, neither permits nor
recognises any right of appeal
by any person in Rhodesia from a
decision, judgment or order of this
Honourable Court to any other court
or tribunal, including the Judicial
Committee of the Privy Council. The
20 Government of Rhodesia, in terms of
the Constitution of Rhodesia, 1965,
regards the decisions, judgments and
orders of this Honourable Court on
all matters within the jurisdiction
conferred on it by that Constitution
as final and binding, and regards
and intends to regard it accordingly
as the final court for all matters
originating in Rhodesia.
- 30 2. In view of the provisions of the
Constitution of Rhodesia, 1965, and
the Government's regard for the
decisions, judgments and orders
of this Honourable Court, it is the
deliberate and considered decision
of the Government that it will not
in any way recognise, enforce or
give effect to any decision,
judgment or order of any other
40 court or tribunal which purports
to be given on an appeal from a
decision of this Honourable Court.

In the Appellate
Division of the
High Court of
Rhodesia

No.102

Annexure thereto:
Statement by the
Minister of
Justice and of
Law and Order
(Contd.)

3.

Furthermore, in order fully to implement the foregoing decision of the Government, it is the decision of the Government to forbid and prevent any officer or servant thereof from doing any act or taking any step which will assist or enable any person to bring or prosecute an appeal from this Honourable Court to or in any other court or tribunal.

10

(Sgd) D. Lardner-Burke

Minister of Justice and of Law and
Order.

NO. 103

JUDGMENT OF THE APPELLATE
DIVISION - RE LEAVE TO
APPEAL TO THE PRIVY COUNCIL

In the Appellate
Division of the
High Court of
Rhodesia

REPORTABLE

JUDGMENT NO.A.D.27/68

No.103

IN THE APPELLATE DIVISION OF THE HIGH
COURT OF RHODESIA AT SALISBURY

Judgment of the
Appellate
Division -
re leave to
appeal to the
Privy Council
Dated 1st
March 1968

Civil Application No.A.D.151 of 1968

B E T W E E N:

10 STELLA MADZIMBAMUTO Applicant

- and -

DESMOND WILLIAM LARDNER-BURKE
in his capacity as Minister of First
Justice and of Law and Order Respondent

- and -

FREDERICK PHILLIP GEORGE
in his capacity as Superinten- Second
dent of the Gwelo Prison Respondent

20 Before: Beadle, C.J., Quenot, J.P.,
 Macdonald, J.A., Jarvis and
 Fieldsend, A.JJ.A.

The 29th day of February, 1968
and the 1st day of March, 1968

J U D G M E N T

BEADLE, C.J.:

30 This is an application on notice
of motion which originally asked for an
order to give leave to the applicant
to appeal from a decision of this court
to the Judicial Committee of the Privy
Council. During argument, however, the

In the Appellate
Division of the
High Court of
Rhodesia

No.103

Judgment of the
Appellate
Division -
re leave to
appeal to the
Privy Council
Dated 1st
March 1968
(Contd.)

order asked for was amended and altered to a request for an order declaring that the applicant had a right to appeal to the Judicial Committee of the Privy Council under subs. (5) of s. 71 of the 1961 Constitution.

The decision with which this application is concerned is the decision of what is now known as the Constitutional Case (Judgment No. A.D. 1/68). The ultimate decision in that case was in the applicant's favour, but in the course of its judgment the court gave a number of decisions which were adverse to the applicant.

10

I agree with Mr. Kentridge, who appeared for the applicant, that in the context of the Constitutional Case these decisions were not obiter dicta, and, indeed, the Solicitor General has not argued that this was so. If an appeal lies, therefore, there is appealable matter in the Constitutional Case.

20

Before going into the merits of the application, it is as well to clarify the position of this court in regard to appeals to the Privy Council. This court has no jurisdiction to grant leave to appeal to the Board. The general rule is that in cases where leave to appeal to the Board is required, that leave must be given by the Board itself. The Board alone has the power to grant leave, except in a case where there is some specific statutory measure which gives a right of appeal to the Board on leave granted by the court a quo. Before the court a quo has jurisdiction to grant leave to appeal, there must be some special statutory provision which gives it that right. There is no such statutory provision in the 1961 Constitution, nor any other legal instrument which applies in this territory.

30

40

In the Appellate
Division of the
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re leave to
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Dated 1st
March 1968
(Contd.)

All this court can be asked for in a proper case, therefore, is to declare that an appeal lies as of right to the Board. The object of such a declaration is to relieve the Board of the task to which I have already referred. This court should not make such a declaration where it considers the case is one where the Board itself, in any event, should first be asked to give leave before it hears the appeal. In a case where the leave of the Board itself is required, a declaration by this court would serve no useful purpose at all. The application in its amended form, however, no longer asks for leave to appeal, but now asks for a declaration that an appeal lies to the Privy Council as of right.

10

The basic question for determination, therefore, is whether or not this is a case where the leave of the Board itself is required before the Board hears the appeal. This involves two distinct enquiries. The first is concerned with the provisions of the 1961 Constitution, and the second with how far the factual position existing in Rhodesia today affects those provisions.

20

The only provision of the 1961 Constitution which deals with appeals as of right to the Board is s. 71, the relevant sub-sections of which are couched in these terms:-

30

"(1) If any person alleges that any of the provisions of sections 57 to 68 has been or is being contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, but subject to sub-section (3) of this section, that person may apply to the Appellate Division of the High Court for redress.

40

"(2) If in any proceedings in the General Division of the High Court or in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 57 to 68, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the Appellate Division of the High Court, so, however, that he shall not be required to comply with any such request which in his opinion is merely frivolous or vexatious.

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Division of the
High Court of
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Division -
re leave to
appeal to the
Privy Council
Dated 1st
March 1968
(Contd.)

"(3) Where in any proceedings such as are mentioned in subsection (2) of this section any such question as is therein mentioned is not referred to the Appellate Division of the High Court, then, without prejudice to the right to raise that question on any appeal from the determination of the court in those proceedings, no application for the determination of that question shall lie to the Appellate Division of the High Court under subsection (1) of this section.

"(4) The Appellate Division of the High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (2) thereof, and for the purposes of that jurisdiction or of the

In the Appellate
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re leave to
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(Contd.)

determination on such an appeal as is mentioned in subsection (3) of this section of any question such as is therein mentioned, the Appellate Division of the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said sections 57 to 68 to the protection of which the person concerned is entitled.

10

Provided that the court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contraventions alleged are or have been available to the person concerned under any other law.

20

"(5) Any person aggrieved by any determination of the Appellate Division of the High Court under this section may appeal therefrom to Her Majesty in Council:

Provided that no appeal shall lie by virtue of this subsection from any determination that any application, or the raising of any question, is merely frivolous or vexatious."

30

The factual position as it exists in Rhodesia today is summarised in an affidavit by the first respondent, the present Minister of Justice. In this affidavit (which the present Prime Minister has confirmed) the first respondent states:-

"1. I am the Minister of Justice and of Law and Order in the Government of Rhodesia and the person cited as First Respondent in these proceedings.

40

"2. I was present when the decisions set out in the accompanying notice were taken by that Government and I participated in the taking of those decisions.

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10 "3. After such decisions were taken I was requested by the Government, as the Minister primarily concerned, to make these decisions known to your Lordships. I respectfully wish to inform your Lordships on behalf of the Government of Rhodesia accordingly and attach hereto a statement of these decisions."

Judgment of the Appellate Division - re leave to appeal to the Privy Council Dated 1st March 1968 (Contd.)

The respondent's affidavit concludes with this paragraph :-

20 "4. In order to give effect to these decisions, instructions have been given by me to the appropriate officers and servants of the Government accordingly."

The statement attached to the affidavit reads:-

30 "1. The Constitution of Rhodesia, 1965, by and under which the Government of Rhodesia governs this country, neither permits nor recognises any right of appeal by any person in Rhodesia from a decision, judgment or order of this Honourable Court to any other court or tribunal, including the Judicial Committee of the Privy Council. The Government of Rhodesia, in terms of the Constitution of Rhodesia, 1965, regards the decisions, judgments and orders of this Honourable Court on all matters within the jurisdiction conferred on it by that Constitution as final and binding, and regards and intends to regard it accordingly as the final court for all matters originating in Rhodesia.

40

In the Appellate
Division of the
High Court of
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Judgment of the
Appellate
Division -
re leave to
appeal to the
Privy Council
Dated 1st
March 1968
(Contd.)

"2. In view of the provisions of the Constitution of Rhodesia, 1965, and the Government's regard for the decisions, judgments and orders of this Honourable Court, it is the deliberate and considered decision of the Government that it will not in any way recognise, enforce or give effect to any decision, judgment or order of any other court or Tribunal which purports to be given on an appeal from a decision of this Honourable Court.

10

"3. Furthermore, in order fully to implement the foregoing decision of the Government, it is the decision of the Government to forbid and prevent any officer or servant thereof from doing any act or taking any step which will assist or enable any person to bring or prosecute an appeal from this Honourable Court to or in any other Court or tribunal."

20

What this court has now to decide, therefore, is:-

(1) Whether the decision of this court in the Constitutional Case was a determination within the provisions of subs. (5) of s.71 of the Constitution, and

(2) If it was such a determination how far the affidavit of the first respondent affects the matter.

30

I will deal first with the question whether or not the decision in the Constitutional Case can be regarded as a determination under subs. (5) of s.71.

It will be as well to examine first the general effect of s.71 before applying its provisions to the facts of the application, because if any appeal as of right lies to the Board, it can only lie by virtue of subs. (5) of s. 71.

40

Subsection (5) of s.71 is a procedural section in the sense that it allows a person to appeal to the Board without first obtaining the leave of the Board. As it is a procedural section, no real hardship is suffered if adherence to the provisions of the section of which it forms part is insisted on before the procedure it outlines can be invoked. The procedure outlined in s. 71 must be followed, though not necessarily, as I pointed out in Chikwakwata's case (supra), in rigid form.

10

Before subs. (5) of s.71 can apply, the Appellate Division must have made a determination in terms of s.71. If the determination is not made in terms of s.71 then a different procedure must be followed if the appellant wishes to appeal to the Board.

20

The circumstances under which the Appellate Division makes the determination under s.71 are these: the matter may be brought by application made under subs. (1) as read with subs. 4 (a) or may be referred to it by the General Division of the High Court, or by a subordinate court, under subs. (2) as read with subs. 4(b).

30

Chikwakwata's case (supra) extended the procedure outlined to its limits when it laid down that where for the first time on appeal an appellant alleged the provisions of the Declaration of Rights had been contravened in relation to him, that could be regarded as an original application to the Appellate Division in terms of s.71. Section 71, therefore, only comes into operation when the case comes before the Appellate Division in the exercise of its original jurisdiction conferred on it by that section.

40

There is nothing in the applicant's original application in the Constitutional Case which refers to s.71 or to s.58 or

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Division of the
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Appellate
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any other section in the Declaration of Rights. There is nothing in her affidavit supporting her application, nor in the order for which she asked which makes any reference to these sections. All the issues she wished to raise she raised in the lower court, and never so much as suggested that any of the matters which she asked the lower court to determine were matters which could be properly determined by this court under the provisions of s. 71. 10

The applicant failed in the court below, and then appealed to this court in the normal way. There is nothing in her notice of appeal to this court which makes any reference whatsoever to s. 71, to s.58 or any other section of the Declaration of Rights. In the present proceedings the applicant appreciated the difficulties in which this absence of any reference to these sections involved her, and based her present application on the assertion that in substance her original application involved a determination by this court under s. 71. 20

The first question to decide is what was the substance of the original proceedings. The substance of the original proceedings was the lawful right of the present Government to govern this territory at the present time. The section dealing with the Declaration of Rights played a quite insignificant part in the original proceedings. Had the 1961 Constitution been framed on the same pattern as the 1923 Constitution and contained no section 71 and no Declaration of Rights, it would not have made the slightest difference to the original proceedings. 30 40

The substance of the Constitutional Case was that the actions of the present Government violated the whole of the 1961 Constitution and not simply an odd section of that Constitution. The mere

fact that the present Government in contravening the 1961 Constitution as a whole could not avoid also contravening s.58 does not make the original application in substance a case concerned with the provisions of s.58 or a determination by this court under s. 71.

In the Appellate Division of the High Court of Rhodesia

No.103

Judgment of the Appellate Division -
re leave to appeal to the Privy Council
Dated 1st March 1968
(Contd.)

10 There is another argument which also shows that a decision on the Declaration of Rights was not the substance of the Constitutional Case. Section 69 of the Constitution reads, inter alia :-

20 "Nothing contained in any law shall be held to be inconsistent with or in contravention of any of the following provisions of this Chapter, that is to say, section 58, 61, 62, 63 (other than subsection (4) thereof) 64, 65, 66, 67 or 68 to the extent that the law in question makes provision with respect to the taking during any period of public emergency of action for the purpose of dealing with any situation arising during that period;"

30 The sections referred to in s.69 are the sections which are commonly known as the Declaration of Rights. The whole issue of the Constitutional Case was whether or not the state of emergency which had been declared by the present Government had been lawfully declared. If it had been lawfully declared, which was held by this court to be the case, s. 58 and the other sections of the Declaration of Rights would have no application at all, because their applicability is expressly excluded by s.69. If the decision of the court was wrong and the state of emergency had been declared unlawfully, then the proclamation made by virtue of that state of emergency, the regulations made by virtue of that proclamation and the order detaining Mr. Madzimbamuto made by virtue of those regulations would all immediately have been invalid, and this without any reference

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whatsoever to s. 58 or to the Declaration of Rights. This result would have been reached even if there had been no Declaration of Rights in the Constitution.

This clearly shows the part played by the Declaration of Rights in the Constitutional Case and shows that the applicability of the Declaration of Rights was not the substance of that case.

In any event, if it was the substance of that case, this court was not called upon in the exercise of its original jurisdiction to make a determination on the question in terms of s. 71. 10

The applicant, therefore, fails to overcome her first hurdle and fails to establish that the decision in the Constitutional Case was a determination by this court under subs. (5) of s. 71.

Even, however, if I am wrong in this, and it can properly be considered that the Constitutional Case decision was a determination under s. 71, the applicant has a more formidable hurdle to overcome, because this court has then to consider the second question. This court has still to decide the effect of the first respondent's affidavit and decide whether, in view of what has been said in that affidavit, it is not necessary that in any event the Board should be consulted by being asked for leave to appeal. 20 30

The point to determine here, therefore, is whether this court can make a declaration the effect of which is to declare that this is a proper matter to go before the Board without any need for the appellant to ask the Board for leave to appeal. But another way, whether this is a case where there is a statutory right to appeal to the Board without the leave of the Board. 40

It appears clearly from the affidavit of the first respondent, which has already

been quoted, that any decision of the Board so far as granting any relief to the applicant's husband is concerned, which was the purport of her case, would be a mere brutum fulmen, and whatever its academic interest might be, and I have no doubt it would be great, it would not result in giving the applicant the relief for which she asked.

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So far as the merits of the case are concerned, the Board's decision would seem to me to be merely an academic exercise. Whether or not the Board would embark on such an exercise is not for this court to say. But what this court can say is that the applicant has no statutory right to compel the Board to embark upon an enquiry the outcome of which is bound to be a mere brutum fulmen.

20

In such circumstances, this is essentially a case where the Board itself must determine whether it will hear the appeal. In the unusual circumstances applying to this case, if this court were to make a declaration the effect of which would be to intimate that there is no need for the Board to grant leave to appeal itself, this court would, I think, would be usurping the function of the Board. In my view, therefore, there is no ground for making the declaration asked for by the applicant and the application should be dismissed with costs.

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QUENET, J.P.:

I agree with all the learned Chief Justice has said. There is nothing I wish to add.

MACDONALD, J.A.:

I agree with the conclusion reached by

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my brother judges, but not with all the reasons for that conclusion. In the judgment which I delivered in this case I found the present Government to be the de facto government of Rhodesia and expressed the view that so far as a municipal, as opposed to an external court is concerned, a de facto government is indistinguishable from a de jure government and must be accepted as such. I also expressed the view that the recognition of a government as de facto necessarily involves recognition of the constitution under which it functions. A government and the constitution under which it functions are inseparable in law, as inseparable, for example, as a company and the memorandum and articles of its association.

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The 1965 Constitution, for reasons which can very easily be appreciated, makes no provision for an appeal to the Judicial Committee of the Privy Council, and a declaration by me that such an appeal exists would be a contravention of that Constitution and a reversal of my finding that the 1965 Constitution is the de facto Constitution of Rhodesia at the present time.

20

I am doubtful whether the Judicial Committee of the Privy Council would entertain an appeal from this court in the existing circumstances since the Judicial Committee could not, I believe, be satisfied that any order made by it would be enforceable in Rhodesia. Applying the ordinary principles governing the assumption and exercise of jurisdiction in any matter, it would be likely to refuse leave to appeal.

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If the Committee were to entertain an appeal (and I emphasise that this is most unlikely) it would of necessity sit, in this particular case, as a court recognising and functioning under the

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Government which claims to be the legal sovereign power in Rhodesia under the 1961 Constitution, that is to say, the Government of Great Britain. It would not, as does this court, sit under the sovereign power of the Rhodesian Government.

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10 Sitting under the sovereign power of the Government of Great Britain, the Judicial Committee would, in my view, be obliged to recognise the 1961 Constitution (as amended by the British Government) as the legal Constitution of Rhodesia and would, I believe, of necessity find that the detention of persons under any other Constitution was invalid. It is inconceivable that the Judicial Committee would recognise the 1965 Constitution as either the de jure or
20 the de facto Constitution of Rhodesia. This court, however, in my view, sits, if it sits at all, under the sovereign power of the Rhodesian Government, and, for the reasons given in my judgment, must apply the provisions of the 1965 Constitution.

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30 It follows from what I have said that the decisions of this Court and the Judicial Committee, functioning as they do at the present time under different sovereign powers, must, of necessity, differ. Judged, however, by reference to the legal norm under which each court operates, each would be correct.

40 In these circumstances, an appeal to the Committee would serve no purpose, because this court could not, in my judgment, accept as binding in Rhodesia a decision reached under the laws not of its own sovereign power but under those of an external sovereign power not recognised as exercising authority under the 1965 Constitution and engaged at the present time in an economic war against this country. This, I believe, is the realistic and constitutional position of

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the respective courts at the present time, and it follows that so far as I am concerned, any order made by the Judicial Committee of the Privy Council would not be regarded by me as having any force and effect in Rhodesia.

I am satisfied, in any event, that an order made by the Judicial Committee would, because of the attitude of the Rhodesian Government, be a brutum fulmen.

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For these reasons, I agree that no declaration should be made that an appeal lies to the Judicial Committee of the Privy Council, and that the application should be dismissed with costs.

JARVIS, A.J.A.:

I agree, for the reasons stated by the learned Chief Justice, that the Constitutional Case did not involve a determination by this court under s. 71 of the 1961 Constitution, such as is referred to in subs. (5) of that section. I agree with what the Chief Justice has said in regard to the second inquiry, and that the application should be dismissed with costs.

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FIELDSEND, A.J.A.:

I agree with the learned Chief Justice that there has been no determination in terms of s. 71 of the Constitution. For that reason there is no appeal as of right to the Privy Council and the order sought should not be granted.

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I do not find it necessary to decide what I regard as the more difficult problem, namely, the effect of the affidavits filed by the respondents on this court's rights or duty to grant the order sought.

DELIVERED at SALISBURY this 1st day of March 1968.

S.W. Kentridge, S.C. (with him N.J. McNally),
for the applicant.

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E.A.T. Smith, Q.C. (with him B.C. Brown),
for the respondents.

Scanlen and Holderness, attorneys for the applicant.

Government Attorney, for the respondents.

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PETITION OF APPEAL

In the Appellate
Division of the
High Court of
Rhodesia

IN THE PRIVY COUNCIL

No.

of 1968

No.104

ON APPEAL FROM THE APPELLATE DIVISION
OF THE HIGH COURT OF SOUTHERN RHODESIA

Petition of
Appeal.

B E T W E E N :

STELLA MADZIMBAMUTO

Appellant

and

DESMOND WILLIAM LARDNER-
BURKE in his capacity
as Minister of Justice
and of Law and Order

First
Respondent

and

FREDERICK PHILLIP GEORGE
in his capacity as Super-
intendent of Gwelo Prison

Second
Respondent

TO HER MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION OF APPEAL OF THE
ABOVE-NAMED APPELLANT

20 SHEWETH :-

1. That the Appellant humbly appeals against the determination of the Appellate Division of the High Court of Southern Rhodesia dated 29th January 1968 whereby the said Appellate Division determined that although the Appellant's appeal against the decision of the General Division of the High Court of Rhodesia dated 9th September 1966 succeeded on a technical point relating to the specific regulation under which the first respondent had caused the Appellant's Husband, Daniel Nyamayaro Madzimbamuto to be detained without trial the first Respondent (as Minister of Justice and of Law and Order in the rebel regime set up in Southern Rhodesia on 11th November 1965) was entitled to exercise powers of detention without trial over

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In the Appellate
Division of the
High Court of
Rhodesia

No. 104

Petition of
Appeal.
(Contd.)

persons in Southern Rhodesia, including the
Appellant's Husband

2. That the Appellant on 10th March 1966 applied
to the General Division of the High Court of
Rhodesia

(a) For an Order that the Respondents
produce DANIEL NYAMAYARO MADZIMBAMUTO
before the Court upon a date to be fixed by
the Court in order that the Court may
discharge the said DANIEL NYAMAYARO
MADZIMBAMUTO from custody and detention and
set him at liberty;

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(b) For an Order that the Respondents pay
the costs of these proceedings.

3. That the Appellant's application was heard in
the General Division of the High Court of Southern
Rhodesia (Lewis and Goldin, JJ.) on 28th, 29th and
30th June, 1st, 4th, 5th and 6th July 1966, on the
last day of which the Court reserved its Judgment.

4. That the General Division of the High Court
of Southern Rhodesia handed down its Judgment
number GD/CIV/23/66 on 9th September 1966 dismiss-
ing the Appellant's application, but no order as
to costs was made.

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5. That by Notice of Appeal dated 23rd September
1966 the Appellant appealed to the Appellate
Division of the High Court of Southern Rhodesia
against the said Judgment of the General Division
of the High Court of Southern Rhodesia.

6. That the Appellant's appeal was heard by the
Appellate Division of the High Court of Southern
Rhodesia (Beadle C.J., Quenet, J.P. Macdonald J.A.,
Jarvis and Fieldsend, A.JJ.A.) on 30th and 31st
January, 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th
and 11th February 1967 at the conclusion of which
the Court reserved its Judgment.

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7. That in May 1967 the Registrar of the
Appellate Division of the High Court of Southern
Rhodesia wrote to the parties informing them that
the Court desired to hear further argument on
certain issues; and that on 9th, 10th, 11th, 12th,
13th, 16th and 17th October the Court heard further
argument and reserved its Judgment.

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In the Appellate
Division of the
High Court of
Rhodesia

No. 104

Petition of
Appeal
(Contd.)

10 8. That on 29th February 1968 the Appellate Division of the High Court of Southern Rhodesia handed down its Judgment, Number AD1/68 allowing the Appellant's appeal with costs in both counts on the said technical issue relating to the specific regulation under which the first respondent had caused the Appellant's husband to be detained without trial but determining (by a majority of four to one) that apart from the said technical point the Appellant's husband was lawfully detained without trial.

9. That the Appellant being dissatisfied with the said determination of the Appellate Division of the High Court of Southern Rhodesia dated 29th January 1968 applied to the said Appellate Division under Section 71(5) of the Constitution of Southern Rhodesia 1961 for leave to appeal therefrom to your Majesty in Council.

20 10. That on 1st March 1968 the Appellate Division of the High Court of Southern Rhodesia (Beadle, C.J., Quenet, J.P., Macdonald J.A., Jarvis and Fieldsend, A.JJ.A.) refused the application for leave to appeal to your Majesty in Council.

11. That on 27th March 1968 the Appellant applied to Your Majesty in Council for special leave to appeal from the determination of the Appellate Division of the High Court of Southern Rhodesia, dated 29th January 1968.

30 12. That by Order in Council dated the Eighth day of April 1968 the Appellant was granted special leave to appeal against the said determination of the Appellate Division of the High Court of Southern Rhodesia dated 29th January 1968 to Your Majesty in Council

40 AND HUMBLY PRAYING that your most gracious Majesty in Council be pleased to take this Appeal into consideration, that the determination of the Appellate Division of the High Court of Southern Rhodesia be reversed and the Appellant's Husband's detention without trial be declared unlawful and for such further or other relief as to Your Majesty in Council may seem just

AND YOUR PETITIONER WILL EVER PRAY.

In the Privy
Council

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Council.

8th April 1968
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Southern Rhodesia including the Petitioner's husband: that the 1st Respondent immediately after the said Judgment of the Appellate Division was given on 29th January 1968 served a new Detention Order on the Petitioner's husband and has continued to detain him without trial: that in an Application to the General Division of the High Court the Petitioner contended that her husband's detention was unlawful but the said Court on the 9th September 1966 dismissed the Petitioner's Application: that the Petitioner appealed to the Appellate Division of the High Court which gave Judgment on 29th January 1968 holding that the continued detention of the Petitioner's husband under Regulation 47(3) of the Emergency Powers (Maintenance of Law and Order) Regulations was unlawful and thus allowing the Appeal: that the Petitioner applied on 29th February 1968 to the said Appellate Division for Declarations that an Appeal lay to Your Majesty in Council but her Applications were refused: And humbly praying Your Majesty in Council to grant the Petitioner special leave to Appeal from the Decision of the Appellate Division of the High Court of Southern Rhodesia dated 29th January 1968 or for further or other relief:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel for the Petitioner no one appearing at the Bar on behalf of the Respondents Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal against the Decision of the Appellate Division of the High Court of Southern Rhodesia dated the 29th January 1968 and that any such questions as the competency of or necessity for granting leave to appeal ought to be reserved for determination when the Appeal is heard:

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"AND in case Your Majesty should be pleased to approve of this Report then Their Lordships do excuse strict compliance with Rules 6 and 11 of the Judicial Committee Rules 1957 and do direct (1) that the Petitioner lodge with the Registrar of the Privy Council forty copies of the Record authenticated by affidavit sworn by

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the Petitioner's Attorney and (2) that there be lodged by the Petitioner in the Privy Council Registry an affidavit that there has been served on the Respondents a copy of Your Majesty's Order in Council herein and a notice of the lodging of the Record in the Privy Council Registry."

In the Privy
Council

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Order in
Council.

8th April 1968
(Contd.)

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor of Southern Rhodesia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW.
