

List of Documents

APPLICATION	2
ADDRESS OF SERVICE	4
FOUNDING AFFIDAVIT	5
ANNEXURE A	14
ANNEXURE B	15
ANNEXURE C	29
DRAFT ORDER	41



**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE**

CCZ /26

In the matter between:

SIKHULISIWE MOYO

&

SURRENDER KAPOIKILU N.O

*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*



APPLICANT

RESPONDENT

COURT APPLICATION IN TERMS of s 85 OF THE CONSTITUTION

a.r.w

Rule 26 (2) of the Constitutional Court Rules 2025

TAKE NOTICE that the Applicant intends to apply to the Constitutional Court at Harare for an order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition, in Form CCZ 2 together with one or more opposing affidavits, with the Registrar of the Constitutional Court at Harare within 10 (ten) days after the date on which this notice was served upon you.

You will also have to serve a copy of the Notice of Opposition and affidavit/s on the Applicant at the address for service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.

If you do not file an opposing affidavit within the period specified above, this application will be set down for hearing in the Constitutional Court at Harare without further notice to you and will be dealt with as an unopposed application.

DATED AT HARARE THIS 26TH DAY OF MAY 2026



COGHLAN, WELSH & GUEST
Applicants Legal Practitioners
Cecil House
2 Central Avenue
HARARE [MR/NGN/bc]
mdu@cwg.co.zw
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0781496486

AND TO **THE REGISTRAR**
Constitutional Court of Zimbabwe
HARARE

AND TO **SURRENDER KAPOIKILU N.O**
RESPONDENT
c/o Parliament of Zimbabwe
Parliament Building
Mt Hampden
HARARE

**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
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&

SURRENDER KAPOIKILU N.O

RESPONDENT

*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

ADDRESS FOR SERVICE

TAKE NOTICE that the Applicants address for service is **care of the undersigned Messrs Coghlan, Welsh & Guest Legal Practitioners** which is the address of its Legal Practitioners of record

DATED AT HARARE THIS 26TH DAY OF MAY 2026



COGHLAN, WELSH & GUEST
Applicants Legal Practitioners
Cecil House
2 Central Avenue
HARARE [MR/NGN/bc]
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IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE

CC

In the matter between:

SIKHULISIWE MOYO

APPLICANT

&

SURRENDER KAPOIKILU N.O
*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

SIKHULISIWE MOYO

do hereby make oath and swear to say as follows:-

1. I am an adult Zimbabwean citizen. Proof of my identity is attached as Annexure A.
2. I am a registered voter in **Bulawayo Central Constituency** and always desirous of asserting and exercising my political rights as enshrined in the Constitution.
3. I depose to this affidavit in my personal capacity and in my own interests in terms of section 85(1) of the Constitution.
4. The facts set out herein are within my personal knowledge and are true and correct.

The parties

5. I am the Applicant in this matter. care of Coghlan, Welsh & Guest Legal Practitioners, of Cecil House, 2 Ahmed Ben Bella Avenue, Harare.
6. The Respondent is **SURRENDER KAPOIKILU** , the incumbent Member of Parliament for **Bulawayo Central Constituency**, cited herein in his official capacity as such and as a person who has an interest in part of the relief I seek in the intended matter. The Respondent's address for service is **Parliament of Zimbabwe which is his place of business**.
7. The Respondent is cited only as the incumbent office-holder whose present claim to continue occupying the parliamentary seat after 3 September 2028 is placed in issue in the application I seek to bring before this Court.
8. By operation of ss 143(1) and 158(1)(a) of the Constitution, read against the current electoral cycle which commenced on 4 September 2023, the Respondent's present tenure is time-bound and cannot, under the existing Constitution, run beyond 3 September 2028. The Respondent accordingly has a direct and substantial interest in the relief sought.

The nature of this application

9. I humbly seek leave to bring a constitutional matter directly before this Honourable Court in terms of s 85 of the Constitution, s 167(5) of the Constitution, the Constitutional Court Act [Chapter 7:22], and the Constitutional Court Rules, 2025, which provide both for court applications generally and specifically for applications for direct access.
10. Section 167(5) of the Constitution provides that the Rules of this Court must allow a person, when it is in the interests of justice and with or without leave of this Court, to bring a constitutional matter directly to

this Court. The Constitutional Court Act likewise proceeds on that footing.

11. I respectfully say to this Honourable Court that the declarations I seek for myself are also of profound national importance. They concern the constitutional limits of the amendment power, the protection of political rights in Chapter 4, and the question whether incumbents in Parliament may extend their own tenure through a constitutional device expressly framed to sidestep section 328(7).
12. The issues for which I seek to ventilate are not routine private disputes. They are questions that go to the structure of constitutional democracy itself, and only this Honourable Court can finally and authoritatively pronounce upon them in the exercise of its constitutional jurisdiction. Section 167 makes this Court the highest court in all constitutional matters and vests in it the final decision whether conduct of Parliament is constitutional.

My standing and constitutional interest

13. Section 85(1) of the Constitution permits a person acting in his own interests to approach a court alleging that a fundamental right or freedom enshrined in Chapter 4 has been, is being, or is likely to be infringed.
14. I approach this Court in my own interests as a voter in **Bulawayo Central Constituency**, one of the constituencies from which members of the National Assembly are elected. The Constitution provides that the National Assembly consists of members elected from the constituencies into which Zimbabwe is divided.

15. I have a direct and substantial constitutional interest in who lawfully occupies the office of Member of Parliament for my constituency, for how long that office may lawfully be occupied, and whether the representative whom I elected for a fixed constitutional term may constitutionally remain in office beyond that term.
16. I also have a direct and substantial constitutional interest in the preservation of my political rights under s 67 of the Constitution, including my right to vote in elections to public office under the Constitution.

The intended constitutional challenge

17. The intended substantive application, annexed hereto as **Annexure "B"**, seeks declaratory relief in respect of two proposed constitutional changes in Constitution Amendment Bill No. 3 of 2026. The Bill is attached to this Application as Annexure C.
18. First, **clause 9** of the Bill proposes to amend **s 143** of the Constitution by replacing the present "*five-year term*" of Parliament with a "*seven-year term*" and by inserting a new subsection **143(2a)** in the following terms: "*Notwithstanding section 328(7), subsection (1) shall apply to the continuation in office of the Senate and National Assembly.*"
19. The challenge in the main application will be that **ss 143(1) and 158(1)(a), read with s 124(1)(a), are term-limit provisions**, and that any amendment whose effect is to extend the tenure of incumbent Members of Parliament cannot, by operation of **s 328(7)**, apply to those more particularly the Respondent in this matter. It will further be contended that the proposed subsection 143(2a) is void and of no force or effect to the extent that it purports to secure continuation in office for incumbent Members of Parliament notwithstanding **s 328(7)**

20. Secondly, clause 3 of the Bill proposes to repeal and substitute s 92 of the Constitution so that the President is no longer elected by the people in a national election but instead *“must be elected by the members of Parliament in a joint sitting of the Senate and the National Assembly.”* The challenge in the main application will be that this proposed change subverts the existing constitutional design under which the President and Parliament derive their mandates through national elections held within a common electoral cycle, and that it unlawfully replaces a direct popular mandate with an indirect parliamentary one.
21. In particular, the proposed amendment to s 92 directly impairs my political rights under s 67 of the Constitution, and especially my right under s 67(3)(a) to vote in elections to which the Constitution applies, as well as my rights under s 67(1)(a) to free, fair and regular elections for elective public office and under s 67(1)(b) to make political choices freely. Under the present constitutional order, the office of President falls within the national electoral scheme.
22. The proposed amendment would remove that office from direct participation by the citizenry and instead vest the election of the President in Members of Parliament sitting jointly. The Respondent herein is thus implicated not only as an incumbent seeking to benefit from an extension of tenure, but also as of those persons those, through the proposed amendment, to diminish my fundamental political rights under s 67.

Why this intended matter is constitutional

23. The putative matter is constitutional in the clearest sense. It concerns the interpretation, protection and enforcement of s2, 67, 85, 88, 92, 117,

124, 143, 158, 167 and 328 of the Constitution. The attendant vindication of my rights under s 67 give me the right to bring the matter under the auspices of s 85 of the Constitution.

24. Section 2 makes the Constitution the supreme law and renders invalid any law, practice, custom or conduct inconsistent with it.
25. Section 117 of the same constitution is central. It provides that legislative authority is derived from the people and is vested in and exercised in accordance with the Constitution, and that the Legislature has power "*to amend this Constitution in accordance with section 328.*" The Bill upon which I seek this Court to make certain declarations itself reproduces that constitutional proposition.
26. That point is decisive for present purposes. The Constitution does not permit Parliament to amend the Constitution in any manner it chooses. It permits amendment only in accordance with section 328.
27. I therefore respectfully contend that a proposed clause in Annexure C which declares "*notwithstanding section 328(7)*" is constitutionally offensive on its face. It is a scheme to amend the Constitution while ignoring a binding part of the Constitution that regulates and limits amendment. It seeks to invoke section 328 and disapply section 328 at the same time.
28. In constitutional terms, that is not amendment in accordance with the Constitution. It is purported amendment by evasion.

Why direct access is in the interests of justice

29. It is in the interests of justice that I be granted leave to approach this

Court directly.

30. First, the questions raised are crisp constitutional questions of law. They arise from the text of the Constitution and the text of the Bill. They do not depend on viva voce evidence.
31. Secondly, the matter is of exceptional public importance. It concerns whether incumbents may constitutionally prolong their own tenure in office and whether the people may be stripped of their vote in the election of the President without direct approval of the people themselves.
32. Thirdly, the matter requires timely constitutional supervision. The wrong lies not only in eventual implementation but in the present advancement of a constitutional scheme which, on its face, seeks to benefit incumbents and alter the constitutional structure of political choice.
33. Fourthly, the intended relief is inherently constitutional and final in character. It is this Court that must finally determine whether Parliament has acted within the Constitution and whether the proposed amendment scheme is compatible with s 328 and Chapter 4 [i.e s 67] of the Constitution.
34. Fifthly, there is no adequate alternative remedy of equal force or utility. A lower court could not provide the same authoritative and final determination on these questions as this Court.

Prospects of success

35. I respectfully submit that the intended application enjoys strong

- prospects of success.
36. The present constitutional scheme fixes a five-year life for Parliament and ties the timing of general elections to that period. The Bill itself states that clauses 3, 7 and 8 seek to substitute the current five-year term with a seven-year term in sections 95, 143 and 158.
 37. Clause 7 is not merely forward-looking. It expressly seeks continuation in office for incumbents notwithstanding section 328(7). That is an express acknowledgment that the amendment is intended to operate upon existing office-holders.
 38. The intended application will contend that s 143 and 158, read with section 124, are term-limit provisions in substance because they fix the duration of parliamentary tenure and the electoral cycle by which that tenure must end and be renewed.
 39. The intended application will further contend that an incumbent Member of Parliament cannot lawfully benefit from an amendment that extends the length of time he or she may remain in office, and that section 328(7) cannot be neutralised by inserting a "notwithstanding" formula into the amendment itself.
 40. On clause 2, the intended application will contend that removing from the people the direct election of the President and transferring that choice to Parliament impairs the political rights guaranteed by section 67 and alters the constitutional relationship between the people and executive authority, which section 88 says derives from the people. The Bill itself reproduces that principle.
 41. Those matters give the intended application more than a mere possibility of success. They disclose a substantial and prima facie sound constitutional case.

Absence of material disputes of fact

- 42. There are no material disputes of fact in this matter.
- 43. The relevant facts are objective and documentary: my status as a voter, the Respondent's status as incumbent MP, the text of the Constitution, and the text of the Bill.
- 44. The issues for determination are accordingly legal and constitutional.

Prayer

- 45. I therefore respectfully pray that this Honourable Court grant me leave to bring the constitutional matter set out in **Annexure "A"** directly before it, and that it grant the ancillary relief set out in the draft order annexed hereto as **Annexure "B"**.

THUS SWORN to at BULAWAYO on this the 22nd day of MAY 2026

.....
S. moyo
 SIKHULISIWE MOYO



Before me

.....
COMMISSIONER OF OATHS



Annexure A

REPUBLIC OF ZIMBABWE
NATIONAL REGISTRATION

ID NUMBER: 39-2017874 J 39 CIT F

Surname: MOYO

First Name: SIKHULISWE

Date of Birth: 10/09/1992

Place of Birth: TUNGWANE

Place of Birth: MATOBO

Date of Issue: 11/04/2022

Signature of holder

CERTIFIED TRUE COPY OF THE ORIGINAL

MUDISI LEOPOLD
LLB (HONS) SA, LLM WARWICK (UK)
LEGAL PRACTITIONER, COMMISSIONER OF OATHS

Annexure B

List of Documents

APPLICATION	2
ADDRESS OF SERVICE	4
FOUNDING AFFIDAVIT	5
DRAFT ORDER	13

*Form CCZ 1***IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE****CCZ /26***In the matter between:***SIKHULISIWE MOYO****APPLICANT****&****SURRENDER KAPOIKILU N.O****RESPONDENT***(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

COURT APPLICATION FOR DECLARATORY & ANCILLARY RELIEF
[In terms of s 85 of the Constitution]

TAKE NOTICE that the Applicant intends to apply to the Constitutional Court at Harare for an order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition, in Form CCZ 2 together with one or more opposing affidavits, with the Registrar of the Constitutional Court at Harare within 10 (ten) days after the date on which this notice was served upon you.

You will also have to serve a copy of the Notice of Opposition and affidavit/s on the Applicant at the address for service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.

If you do not file an opposing affidavit within the period specified above, this application will be set down for hearing in the Constitutional Court at Harare without further notice to you and will be dealt with as an unopposed application.

Leave to apply directly to the Court was granted on the day of 2026.

DATED AT HARARE THIS DAY OF MAY 2026

COGHLAN, WELSH & GUEST
Applicants Legal Practitioners
Cecil House
2 Central House
HARARE [MR/NGN/bc]
mdu@cwg.co.zw ng@cwg.co.zw
0781496486

AND TO **THE REGISTRAR**
Constitutional Court of Zimbabwe
HARARE

AND TO **SURRENDER KAPOIKILU N.O**
RESPONDENT
c/o Parliament of Zimbabwe
Parliament Building
Mt Hampden
HARARE

**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE**

CCZ /26

In the matter between:

SIKHULISIWE MOYO

APPLICANT

&

SURRENDER KAPOIKILU N.O

RESPONDENT

*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

ADDRESS FOR SERVICE

TAKE NOTICE that the Applicant's address for service is **care of the undersigned Messrs Coghlan, Welsh & Guest Legal Practitioners** which is the address of its Legal Practitioners of record.

DATED AT HARARE THIS DAY OF MAY 2026

**COGHLAN WELSH & GUEST
Applicants Legal Practitioners
Cecil House
2 Central Avenue
HARARE [MR/NGN/bc]**

AND TO THE REGISTRAR
Constitutional Court of Zimbabwe
HARARE

AND TO SURRENDER KAPOIKILU N.O
RESPONDENT
c/o Parliament of Zimbabwe
Parliament Building
Mt Hampden
HARARE

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE

CC

In the matter between:

SIKHULISIWE MOYO

APPLICANT

&

SURRENDER KAPOIKILU N.O

RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

SIKHULISIWE MOYO

do hereby make oath and swear as follows: —

1. I am an adult Zimbabwean citizen. A copy of my national identity document is annexed hereto marked Annexure "A".
2. I am a registered voter in **Bulawayo Central Constituency** and I depose to this affidavit in my personal capacity and in my own interests in terms of s 85(1) of the Constitution.
3. The facts herein deposed to are within my personal knowledge and are true and correct.

The parties

4. I am the Applicant in this matter. care of Coghlan, Welsh & Guest Legal Practitioners, of Cecil House, 2 Ahmed Ben Bella Avenue, Harare.
5. The Respondent is **SURRENDER KAPOIKILU** the incumbent Member of Parliament for **Bulawayo Central Constituency**, cited herein in his official capacity as such and as the present holder of the parliamentary seat

whose legal entitlement to continue occupying that office is directly implicated by the relief which I seek in this application.

6. The Respondent is cited solely because he or she is the incumbent officeholder whose continued occupation of the seat falls to be measured against the Constitution, and because the declaratory and consequential relief sought herein will determine whether the said Respondent may lawfully remain in office beyond the present constitutional term.

The constitutional setting

7. The Constitution presently provides that the National Assembly consists, *inter alia*, of **two hundred and ten members elected from the two hundred and ten constituencies into which Zimbabwe is divided**. I am a voter in one such constituency and the Respondent is the current holder of that seat.
8. The Constitution further provides that Parliament is elected for a **five-year term**, and that a general election must be held so that polling takes place not more than **thirty days before the expiry of that five-year period**.
9. The present parliamentary cycle commenced on **4 September 2023**. On the existing constitutional scheme, the Respondent's present tenure is therefore time-bound and cannot, under the Constitution as it presently stands, run beyond the expiry of that cycle.
10. Legislative authority is derived from the people and is vested in and exercised in accordance with the Constitution, and Parliament may amend the Constitution only **in accordance with s 328**. Executive authority likewise derives from the people and must be exercised in accordance with the Constitution. The Bill itself reproduces those constitutional propositions.
11. Section 67 enshrines my political rights, including the right to **free, fair and regular elections for any elective public office**, the right to make

political choices freely, and the right, if over eighteen years of age, to vote in all elections and referendums to which the Constitution or any other law applies.

12. On or about **16 February 2026**, Constitution Amendment Bill No. 3 of 2026 was published. It is the proposed changes contained in that Bill that have necessitated this application. A copy of the Amendment Bill is attached as **Annexure B**

Clause 9 and clause 10: the proposed extension of the Respondent's tenure

13. Clause 9 of the Bill proposes to amend s 143 by replacing the present *five-year term* of Parliament with a *seven-year term*. It further proposes to insert a new subsection 143(2a) in the following terms: *"Notwithstanding section 328(7), subsection (1) shall apply to the continuation in office of the Senate and National Assembly."*
14. Clause 10 correspondingly proposes to amend s 158(1)(a) so that the timing of general elections is tied to the proposed seven-year period rather than the present five-year period.
15. The effect of those proposed changes is plain. The Respondent, who was elected to a parliamentary seat governed by the present constitutional tenure, would remain in office for longer than the Constitution presently permits. The proposed amendment therefore bears directly upon my position as a voter in the constituency and upon the constitutional cycle by which I am entitled again to be consulted as part of the electorate.
16. In my respectful conetion, ss 143 and 158, read with s 124, are term-limiting in nature. They are the provisions that define the duration of parliamentary tenure and the constitutional point at which that tenure must end and be renewed through elections.
17. Section 328(7) provides that an amendment to a term-limit provision, the effect of which is to extend the length of time that a person may hold or

occupy any public office, **does not apply** in relation to any person who held or occupied that office, or an equivalent office, before the amendment.

18. That prohibition is substantive. It is not optional. Section 117 itself says that constitutional amendment may occur only in accordance with s 328. A constitutional scheme that purports to amend the Constitution while simultaneously disapplying a controlling part of s 328 is, in conception and in effect, inconsistent with the Constitution itself.
19. The proposed continuation-in-office clause does not escape s 328(7). It is an attempt to override by formula a constitutional prohibition that is binding in substance. For that reason it is void and incapable of conferring constitutional benefit upon an incumbent office-holder.
20. The Respondent is such an incumbent. The Respondent accordingly cannot, consistently with s 328(7), derive the benefit of the proposed extension of parliamentary tenure even if clause 9 and clause 10 are enacted. Enactment alone would not cure the constitutional disability imposed by s 328(7).
21. It follows that the Respondent may not lawfully continue in office beyond the expiry of the original constitutional term applicable to his seat, and any purported continuation in office by reliance on clause 9 of the Bill would be unconstitutional and of no force or effect.

Clause 3: the impairment of my political rights

22. Clause 3 of the Bill proposes to repeal and substitute s 92 of the Constitution so that the President is no longer elected through the present constitutional electoral scheme but instead "*must be elected by the members of Parliament in a joint sitting of the Senate and the National Assembly.*"

23. I respectfully say that this proposed change is not merely mechanical. It alters the position of the citizen in the constitutional order. It removes from the citizenry direct participation in the selection of the Head of the Executive and transfers that electoral choice to Parliament.
24. Executive authority derives from the people. My political voice is therefore not ornamental. It is constitutional. Under the present constitutional order, the office of President falls within the national electoral structure through which the people confer democratic authority.
25. Section 67 secures to me the right to make political choices freely, the right to free, fair and regular elections for elective public office, and the right to vote in elections to which the Constitution applies. Clause 3 directly affects and impairs those rights.
26. In particular, the proposed clause diminishes my right under s 67(3)(a) to vote in elections to which the Constitution applies, impairs my right under s 67(1)(a) to free, fair and regular elections for elective public office, and attenuates my right under s 67(1)(b) to make political choices freely.
27. The injury is not abstract. It is concrete in constitutional principle. My role as a citizen in the choice of the President would be displaced, and that choice would be exercised instead by Members of Parliament, including the Respondent, acting in my place.
28. Put plainly the Respondent and the rest of the Parliamentary body have indicated their intention to impair my political rights by transferring my right to elect the President from me to their collective.
29. This is especially objectionable because the Respondent's own tenure is itself the product of the ballot, yet the Respondent stands to benefit from a constitutional scheme which both prolongs that tenure and appropriates to Parliament a political choice presently belonging, in constitutional substance, to me and the rest of the electorate.

Why clause 3 cannot lawfully take effect absent compliance with s 328(6)

29. Section **328(6)** imposes an additional constitutional discipline where a Constitutional Bill seeks to amend certain constitutionally protected subject matter, including the rights contained in **Chapter 4**.
30. Clause 3 is framed as an amendment to **s 92**. But in its substance and effect it directly impairs the political rights guaranteed to me by **s 67** in Chapter 4. It does so by deleting my constitutional participation in the election of the President and by transferring that electoral choice to the Respondent on my behalf Parliament.
31. I accordingly contend that clause 3 cannot lawfully take effect merely by reason of its drafting form or location. Because it is poised to impair rights I am guaranteed under **s 67**, it is constitutionally subject to the limitation and discipline imposed by **s 328(6)**.
32. Put differently, the Constitution does not permit Chapter 4 rights to be cut down indirectly by a clause housed elsewhere while escaping the controlling discipline that **s 328(6)** imposes.
33. The declaration I seek is that clause 3 be unmasked for what it is. The clause if enacted must remain ineffectual until such time I and the rest of the electorate have been consulted through a referendum if we want to give up our right to elect the President which is a fundamental right that I and others currently enjoy.

The relief sought

33. I accordingly seek relief declaring, in substance and effect, –
 - 33.1 that **ss 143 and 158**, read with **s 124**, are term-limit provisions within the meaning and protection of **s 328(7)**;

33.2 that the proposed subsection 143(2a) is unconstitutional and of no force or effect to the extent that it purports to permit incumbent Members of Parliament to benefit from an extension of tenure notwithstanding s 328(7);

33.3 that the Respondent, being an incumbent Member of Parliament, cannot benefit from the proposed amendment even if enacted, and must relinquish office upon expiry of the original constitutional term applicable to his seat;

33.4 that clause 3 of the Bill directly affects and impairs my political rights under s 67 of the Constitution; and

33.5 that clause 3 cannot lawfully take effect unless there has been compliance with s 328(6) of the Constitution.

34. Wherefore I pray for an order in the terms of the draft order annexed hereto.

THUS SWORN to at *BULAWAYO* on this the *22nd* day of MAY 2026

S. Moyo.
.....
SIKHULISIWE MOYO

Before me

[Signature]
.....
COMMISSIONER OF OATHS



**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE**

CCZ /26

In the matter between:

SIKHULISIWE MOYO

APPLICANT

&

SURRENDER KAPOIKILU N.O

RESPONDENT

*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

DRAFT ORDER

HARARE the day of 2026

BEFORE the Honourable Justices

Mr(s).....For the Applicant

Mr(s).....For the Respondents

WHEREUPON after reading papers filed of record and hearing Counsel,

IT IS DECLARED THAT

1. Section 117 of the Constitution permits the Legislature to amend the Constitution only in accordance with section 328 of the Constitution.
2. Clause 7 of the Constitution of Zimbabwe Amendment Bill No. 3 of 2026, insofar as it proposes to insert section 143(2a) providing that, notwithstanding section 328(7), section 143(1) shall apply to the continuation in office of the Senate and National Assembly, is inconsistent with the Constitution and cannot constitutionally benefit the Respondent as an incumbent Member of Parliament.
 - 2.1 if the said amendment is enacted, the Respondent shall not by reason thereof remain in office beyond the expiry of the original constitutional term applicable to Respondent' Parliamentary seat prior to the amendment.

3 It be and is hereby declared that clause 2 of the Constitution of Zimbabwe Amendment Bill No. 3 of 2026, insofar as it substitutes the election of the President by the people with election by Members of Parliament in joint sitting, alters and limits the Applicant's political rights under section 67 of the Constitution and

3.1 if the said amendment is enacted, the said amendment cannot lawfully take effect absent compliance with s 328(6) of the Constitution.

4 There shall be no order as to costs.

BY THE JUDGE

BY THE REGISTRAR

Annexure C

CONSTITUTION OF ZIMBABWE AMENDMENT (No. 3)

CONSTITUTION OF ZIMBABWE (AMENDMENT) BILL, 2026

MEMORANDUM

This Bill introduces a set of constructive reforms that, taken together, reinforce constitutional governance, strengthen democratic structures, clarify institutional mandates, and harmonise Zimbabwe’s constitutional order with tested and successful practices in other progressive jurisdictions. The Bill modernises and streamlines various aspects of the constitutional architecture while upholding the values of the 2013 Constitution. The amendments form part of a broader constitutional evolution, one that is grounded in the deliberate refinement of governance frameworks and an increased focus on institutional efficiency, political inclusivity, and long-term national stability. It must be reiterated that many of the reforms incorporated into this Bill align Zimbabwe with contemporary African constitutional standards that have proven to be effective, resilient, and widely respected.

In detail, the Bill provides as follows—

Clause 1

This clause provides the short title of the Bill.

Clause 2

This clause transfers the responsibility for registering voters, compiling the voters’ roll, and maintaining the voters’ roll and registers from the Zimbabwe Electoral Commission to the Registrar-General. The rationale ensures efficiency since the Registrar-General is the custodian of these records.

Clause 3

This amendment establishes a parliamentary method for selecting the President. It specifies that a candidate must secure a majority of votes, and if no one achieves an absolute majority, a run-off election will be held. The process is overseen by the Zimbabwe Electoral Commission to ensure it is conducted properly. These measures strengthen constitutional accountability by promoting fairness, openness and judicial oversight in the election. The procedure for the election shall be in accordance with Standing Rules and Orders of Parliament.

Clauses 4, 9, 10

To eliminate election mode toxicity and allow sufficient time for project implementation while promoting stability, these clauses aim to substitute the current five-year term with a seven-year term as provided in sections 95, 143 and 158 of the Constitution.

Clause 5

This clause provides for the deletion of the word “first” before “Vice President”. This concept was repealed by constitutional amendment number 2.

Clause 6

This clause stipulates that the provisions of section 92 shall take effect if the President-elect passes away, resigns or is removed from Office.

Clause 7

This clause removes the words “High Court” and replaces them with “Supreme Court” since the Attorney General must be qualified for appointment as a judge of the Supreme Court.

Clause 8

The provision allows the President to appoint ten (10) senators, raising the total number of senators to ninety (90). This amendment aims to bring in broader technical expertise, enhance parliamentary oversight, expand the pool of potential ministers, build public confidence, and help reduce political and social divisions.

Clause 11

The clause provides for the creation of a Zimbabwe Electoral Delimitation Commission. It addresses the concerns about ZEC's dual role in drawing electoral boundaries and promotes good governance and institutional integrity.

Clause 12

This clause deletes the Zimbabwe Electoral Commission and substitutes it with the Zimbabwe Electoral Delimitation Commission, as the function for delimitation of boundaries is now within the ambit of the Zimbabwe Delimitation Commission.

Clause 13

This clause deletes the Zimbabwe Electoral Commission and substitutes it with the Zimbabwe Electoral Delimitation Commission wherever it appears in the section, as the function for delimitation of boundaries is now within the ambit of the Zimbabwe Delimitation Commission.

Clause 14

This clause provides for the Constitutional Court to hear any other matter on a point of law of public importance. Currently, the Constitutional Court is only permitted to hear cases related to constitutional matters.

Clause 15

This clause repeals section 180(3), (4), (4a) and (5) and substitutes it with the appointment of Judges after consulting the Judicial Service Commission.

Clause 16

This clause amends section 212 (Functions of Defence Forces) of the Constitution by deleting the words "to uphold this Constitution" and substituting them with "in accordance with the Constitution". The amendment is intended to reinforce the provisions of sections 213 and 214 of the Constitution.

Clause 17

This clause proposes repealing section 239(c) to (e) so that the functions can be reassigned to the Registrar-General, and section 239(f) so that its function is transferred to the Zimbabwe Electoral Delimitation Commission.

Clause 18

This clause repeals Part 4 of Chapter 12 of the Constitution, which establishes the Zimbabwe Gender Commission. Its functions will be transferred to the Zimbabwe Human Rights Commission (ZHRC), since the ZHRC is already mandated to protect all human rights, including those that are currently under the purview of the Zimbabwe Gender Commission.

Clause 19

This clause inserts the Zimbabwe Gender Commission function under the Zimbabwe Human Rights Commission.

Clause 20

This clause removes the requirement for the President to appoint the Prosecutor-General on the advice of the Judicial Service Commission, as such an arrangement

creates a potential conflict of interest where the Commission recommends a candidate for appointment.

Clause 21

This clause repeals section 281(2). It violates the political rights of traditional leaders. Their code of conduct shall be provided in an Act of Parliament.

Clause 22

This clause repeals Part 6 of Chapter 12 of the Constitution (National Peace and Reconciliation Commission).

BILL

To amend the Constitution of Zimbabwe.

WHEREAS sections 88 and 117 of the Constitution provide that—

5 “88(1) Executive authority derives from the people of Zimbabwe and must be exercised in accordance with this Constitution.

(2) The executive authority of Zimbabwe vests in the President who exercises it, subject to this Constitution, through the Cabinet.”

“117(1) The legislative authority of Zimbabwe is derived from the people and is vested in and exercised in accordance with this Constitution by the Legislature.

10 (2) The legislative authority confers on the Legislature the power—

(a) to amend this Constitution in accordance with section 328;

(b) to make laws for the peace, order and good governance of Zimbabwe; and

15 (c) to confer subordinate legislative powers upon another body or authority in accordance with section 134.”

AND WHEREAS national development programmes benefit from stability and continuity of policies and legislative frameworks within a predictable governance environment, thereby enabling such programmes to be implemented to completion;

20 NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows—

H.B. 1, 2026.]

Printed by the Government Printer, Harare

1 Short title

This Act may be cited as the Constitution of Zimbabwe (Amendment) Bill (No. 3), 2026.

2 New section inserted in Constitution

A new section is inserted after section 43(continuation and restoration of previous) as follows— 5

“43A Registration of Voters, voters’ rolls and registers

The Registrar-General shall—

- (a) register voters;
- (b) compile voters’ rolls and registers; 10
- (c) ensure the proper custody and maintenance of the voters’ rolls and registers.”

3 Amendment of section 92 of Constitution

Section 92 (“Election of President”) of the Constitution is repealed and substituted by the following— 15

“92 Election of President

(1) The President must be elected by the members of Parliament in a joint sitting of the Senate and the National Assembly.

(2) The election must take place at a joint sitting of Parliament following the swearing in of members of the Senate and the National Assembly and the election of the Speaker of the National Assembly and the President of Senate, respectively, after every general election, or whenever necessary to fill a vacancy in the office of President. 20

(3) To be elected President, the candidate must receive more than half of the valid votes cast by the members of Parliament. 25

(4) In the event that none of the presidential candidates receive a majority in the first ballot, a run-off ballot must be held between the two candidates with the highest number of votes and the candidate receiving the majority in the run-off is declared elected as President.

(5) The Zimbabwe Electoral Commission shall preside over the election, or a designated judge and the procedure for the election shall be in accordance with the Standing Orders of Parliament. 30

(6) A person elected as President under this section must cease to be a member of Parliament upon assuming office, if they were a member at the time of election. 35

(7) In the case of a vacancy in the office of President due to death, resignation, removal, or incapacity, an election must be held at a joint sitting of Parliament not more than thirty days after the vacancy occurs.

(8) No amendment to any law or enactment introducing substantive policy changes shall be passed by Parliament during the period between the occurrence of a vacancy in the office of the President and the election of a new President by Parliament.”. 40

4 Amendment of section 95 of Constitution

Section 95 (“Term of office of President and Vice-Presidents”) of the Constitution is amended— 45

11 Insertion of new section in Part 3 of Chapter 7 of Constitution

Chapter 7 Part 3 (Delimitation of Electoral Boundaries) of the Constitution is amended by the insertion of a new section 159A before “section 160” as follows—

“159A Zimbabwe Electoral Delimitation Commission

(1) From time to time, as may be required for the purposes of this Constitution, the President shall appoint the Zimbabwe Electoral Delimitation Commission which shall consist of— 5

- (a) a chairperson who must be a Supreme Court judge or a former Supreme Court judge or a person qualified for appointment as a Supreme Court judge appointed after consultation with the Judicial Service Commission; and 10
- (b) four other members who are appointed—
 - (i) at least one must be qualified to practise law in Zimbabwe, and have been so qualified for at least seven years; 15
 - (ii) at least one chosen for their knowledge and experience in administration and governance and possesses relevant qualification from a certified institution;
 - (iii) at least one must be qualified in demography or cartography and have been so qualified for at least seven years; 20
 - (iv) at least one representative from the body responsible for elections.

(2) Where the members of the Zimbabwe Electoral Delimitation Commission are not unanimous regarding any matter, the view of the majority shall prevail and, in the event of an equality of votes, the chairperson shall have a casting vote.”. 25

12 Amendment of section 160 of Constitution

Section 160 (Number of constituencies and wards) of the Constitution is amended in subsections (1) and (2) by the deletion of “Zimbabwe Electoral Commission” with the substitution of “Zimbabwe Electoral Delimitation Commission”. 30

13 Amendment of section 161 of Constitution

Section 161 (Delimitation of electoral boundaries) of the Constitution is amended—

- (a) by the deletion of “Zimbabwe Electoral Commission” and the substitution of “Zimbabwe Electoral Delimitation Commission” wherever it appears in this section. 35
- (b) in subsection (2), the deletion of “six months” and the substitution of “eighteen months”.

14 Amendment of section 167 of Constitution 40

Section 167 (Jurisdiction of Constitutional Court) of the Constitution is amended by the insertion of a new subsection (6) after subsection (5) as follows—

“(6) The Constitutional Court may decide any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by the Court.” 45

15 Amendment of section 180 of Constitution

Section 180 (Appointment of Judges) of the Constitution is amended—

- (a) in subsection (2) by the insertion of “and all other judges” after the words “High Court”
- (b) by the repeal of subsections (3), (4), (4a) and (5).

16 Amendment of section 212 of Constitution

5 Section 212 (Functions of Defence Forces) of the Constitution is amended by the deletion of the words “and to uphold this Constitution” and the substitution of “in accordance with the Constitution”.

17 Amendment of section 239 of Constitution

10 Section 239 (“Function of Zimbabwe Electoral Commission”) of the Constitution is amended by the repeal of paragraphs (c), (d), (e), (f) and (i).

18 Repeal of Part 4 of Chapter 12 of Constitution

Chapter 12 of the Constitution is amended by the repeal of Part 4 (“Zimbabwe Gender Commission”).

19 Amendment of section 243 of Constitution

15 Section 243 (“Functions of Zimbabwe Human Rights Commission”) of the Constitution is amended in subsection (1)(c) by the insertion of the following after the word “freedoms”—

- “(c) including issues concerning gender equality to ensure gender equality as provided in this Constitution.”.

20 Amendment of section 259 of Constitution

20 Section 259 (Prosecutor-General and other officers) of the constitution is amended in subsection (3) by the deletion of “on the advice of the Judicial Service Commission”.

21 Amendment of section 281 of Constitution

25 Section 281 (“Principles to be observed by traditional leaders”) of the Constitution is amended by the repeal of subsection (2).

22 Repeal of Part 6 of Chapter 12 of Constitution

Chapter 12 of the Constitution is amended by the repeal of Part 6 (“National Peace and Reconciliation Commission”).

**IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT HARARE**

CCZ /26

In the matter between:

SIKHULISIWE MOYO

APPLICANT

&

SURRENDER KAPOIKILU N.O

RESPONDENT

*(cited in his capacity as the incumbent
Member of parliament for the constituency of
Bulawayo Central)*

DRAFT ORDER

HARARE the day of 2026

BEFORE the Honourable Justices

Mr(s).....For the Applicants

Mr(s).....For the Respondents

WHEREUPON after reading papers filed of record and hearing Counsel,

IT IS Ordered

1. That The Applicant be and is hereby granted leave to bring the constitutional matter set out in the annexed draft application directly before the Constitutional Court.
2. The draft constitutional application annexed to the founding affidavit be and is hereby treated as the intended substantive application for purposes of the leave proceedings.
3. The Applicant shall file the substantive application within [x] days of this order.
4. There shall be no order as to costs

BY REGISTRAR

BY THE JUDGE