

## **Lovemore Moyo: The Case of the Matobo Parliamentary seat**

On the 25<sup>th</sup> of August 2008, Zimbabwe's legislatures voted to elect a Parliamentary speaker to preside over the August house. The significance of this election was that it ushered in Love more Moyo, Zimbabwe's first speaker from the opposition bench since independence in 1980. He received 110 votes whilst his opponent, Paul Themba Nyati received 98 votes. It is instructive to note at this point that Love more Moyo had just been elected Member of Parliament for Matobo South.

Paul Themba-Nathan represented the smaller MDC faction then led by Arthur Mutambara, but he had support of President Robert Mugabe's ZANU-PF party. The ruling ZANU-PF party had lost its majority in the 210-seat parliament in elections in March. Final results gave 100 seats to an MDC faction led by Morgan Tsvangirai, the party's presidential candidate. President Robert Mugabe's ZANU-PF got 99 seats and the then Arthur Mutambara lead MDC party won 10 seats and another seat went to Professor Jonathan Moyo who at the time stood as an independent candidate.

Mr. Love more Moyo won 110 votes, thanks to a secret turnaround by most of the ten MPs of the Mutambara faction. It goes without saying that at least three of them soon after lost their seats after being dismissed from the party for refusing to be whipped into line.

The speaker of parliament is the fourth most powerful post in Zimbabwe

It is common knowledge that a few weeks after the election of the speaker of Parliament, the then independent Member of Parliament for Tsholotsho North Professor Jonathan Moyo, MDC's Moses Mzila Ndlovu, Patrick Dube and Siyabonga Ncube put the house on notice that they would be challenging in the High Court the election of MDC-T Love more Moyo as speaker of the house. The basis of the challenge was premised on the argument that the voting process was flawed and not done by secret ballot and that the behavior of some MDC-T MPs who displayed their ballot papers after casting their votes flawed the election process and this had an influence on the outcome. The matter was first heard in the High Court which initially ruled in favor of Love more Moyo and a subsequent appeal to the Supreme Court rescinded the previous judgment.

In his judgment, Chief Justice Chidyausiku said:

*"I have come to the conclusion that the six named Members of Parliament did not vote by secret ballot and therefore their votes were irregular. The inclusion of the irregular votes in the determination of the final outcome of the election of the Speaker constitutes a failure to comply with section 39 of the Constitution, as read with Standing Order 6, providing the election of the Speaker of Parliament by secret ballot, thereby rendering it invalid."*

The MPs named as having displayed their votes were Tendai Biti, the finance Minister, Deputy Prime Minister Thokozani Khupe, Amos Chibaya, Gordon Moyo, Severino Chambati and Piniel Denga.

The effect of the Supreme Court decision instantly rendered the position of speaker vacant. The question on everybody's mind with regard to this matter is:

Can Love more Moyo constitutionally revert back to his parliamentary seat in Matobo South in light of the Supreme Court judgment that has just ruled his election as Speaker irregular?

Under section 39, the Zimbabwe Constitution provides for the election of the speaker of Parliament.

### *39 Elections of Speaker and Deputy Speaker*

*(1) When the House of Assembly first meets.....(2) The Speaker shall be elected in accordance with Standing Orders from among persons who are or have been members of the House of Assembly and who are not members of the Cabinet, Ministers or Deputy Ministers?*

*Provided that a person who is not a member of the House of Assembly*

*d) if any circumstance arises that, if he had been a member of Parliament—*

*(i) the provisions of section 41(j), (k), (n), (o), (p) or (q) would apply to him and his seat as a member would become vacant; or*

*(ii) he would be required, by virtue of the provisions of section 42, to cease to exercise his functions as a member;*

Interpretations of this matter have been varied including arguments that make the inference that, since Love more Moyo lost his seat before he was elected speaker by operation of law, it then should follow that the subsequent loss of his position as speaker by the operation of law should reverse the loss of his seat since his loss was premised on him staying on as speaker.

My take is different.

Section 39, subsection d clearly provides for the scenario of which Love more Moyo was in on the eve of the election on the 24<sup>th</sup> of August 2008. He was a Member of Parliament representing a constituency. The constitution clearly states *'if any circumstance arises that, if he had been a member of Parliament....his seat a member would become vacant....and he ceases to exercise his functions as a member'*.

When Love more Moyo was elected speaker his Matobo south parliamentary seat fell vacant. In other words he lost all entitlement to this seat upon his election as the speaker of parliament. This vacant seat which, if we be reminded

has been vacant for almost two years. It is therefore possible that the demographics in that constituency have changed and therefore him going back goes against any basic tenets of democratic representation. The fate of this seat is now at the mercy of the electoral commission of whom upon instruction from the President of the country a by-election would have been held. The fact that the president of the country did not call for a by-election in Matobo South and indeed in other constituencies currently vacant is not a valid reason at law to allow Moyo to revert back to the Matobo South seat.

This is not a case of restitution whereby Lovemore Moyo is being compensated for a pre-conceived loss arising from the commission or omission of his party. Besides the Zimbabwean legal system has no such precedent. The election of Lovemore Moyo did not become illegal until the supreme court pronounced it. Hence one can not look at his election as speaker and the subsequent pronouncement of the supreme court as issues retrospectively occurring at the same time. In other words, from the time of his election as speaker his work in parliament was legal and binding to the house. His work and position seized to be when the supreme court pronouncement was made to the contrary.

Lest we forget, we need to be mindful of the fact that the fundamental reason why a member loses his or her seat upon being elected to the speaker's position has more to do with impartiality in the conduct of the business of the house. Assuming that Lovemore Moyo was now an 'impartial officer', how then can he revert back to be partial at the instance of losing his post.

However the Zimbabwe Constitution as amended provides that the former speaker may constitutional present himself as a candidate for speaker. Provisions under section 39 (2) do provide for that:

*'The Speaker shall be elected in accordance with Standing Orders from among persons who are or have been members of the House of Assembly and who are not members of the Cabinet, Ministers or Deputy Ministers:*

Should he fail to be elected into the speaker's position properly at the next parliamentary meeting, considering that the dynamics within the three political parties in the GPA have since changed, he then joins the ranks of other former members of parliament who are waiting for by-elections in order to recontest their previous constituencies.

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