

Zimbabwe Lawyers for Human Rights

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PRESS STATEMENT

Police Compliance with the High Court Order in the ANZ case Applauded

The High Court should once again be applauded for its latest ruling of 21 January 2004 in the ANZ saga. The ruling shows the High Court's resolute stance in upholding the tenets of democracy and basic universally recognized human rights in the ANZ case.

Previous High Court and Administrative Court Orders

On 17 September 2003 High Court Judge Justice Omerjee in a very legally sound and brave judicial decision ruled that the police conduct of forcibly occupying the premises of ANZ and seizing their equipment without a Court order was illegal and that there was nothing at law to prevent the ANZ from publishing the Daily News. The police were ordered to return the seized equipment and not to interfere with the ANZ. In particular Justice Omerjee ruled that the police " have no legal right to prevent the applicant or its employees from gaining access to the premises of the applicant and carrying on the business of publishing a newspaper." The order was not complied with and dilatory processes employed to frustrate the ANZ remedy.

On 24 October 2003 Administrative Court Judge President Majuru made a ruling setting aside the decision of the MIC declining to grant the ANZ a licence. He gave three grounds namely that, the MIC was improperly constituted and could not in its current composition issue out any valid licences or decisions, the MIC had acted outside its powers when it turned down the ANZ application, and that the MIC was biased especially through its Chairman against the ANZ. Mr Majuru also made a ruling that as far as the court was concerned ANZ had to be issued with a certificate of registration. The operative part of the judgment reads " Given the finding of bias that we have made, the unjustifiable delays that might be occasioned to the Applicant by a re-determination, and the fact that we are in as good a position to make the decision ourselves, we order that the Appellant be issued with a certificate of registration by the Respondent" Mr Majuru's judgment was brave and well reasoned and showed a marked degree of judicial activism in protecting the bill of rights and universally recognised human rights and fundamental freedoms. The judgment was not complied with and substantial pressure was thereafter applied on Mr Majuru.

On 19 December 2003 Administrative Court Judge President Selo Nare granted an order that

1. That the carrying into effect of the judgment of Judge Majuru handed down on 24th October 2003, pending appeal by the Respondent (MIC) to the Supreme Court, is allowed.
2. This order shall remain in force and effect notwithstanding the filing of any notice of appeal against it by Respondent.
3. The Respondent shall pay the costs of this application.

This order was not complied with by the State and dismissed as academic by the Minister of Information Professor Jonathan Moyo.

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On 9 January 2004, the High Court Judge Justice Uchena granted an order to the effect that the police vacate the ANZ premises at Old Mutual House and also at No. 18 James Martin Avenue in Southerton. Furthermore the police were ordered to refrain from interfering with the normal business activities of the ANZ and that of its employees. Sadly, the police again defied this order to vacate ANZ premises in a blatant show of contempt.

LATEST ORDER

On 21 January 2004 High Court Judge Justice Tendai Uchena granted yet another order for the police to vacate A.N.Z. premises and not to interfere with the business of the ANZ in any way whatsoever. This means that the Daily News and The Daily News on Sunday should immediately be back in circulation again. The latest judgment by the court is applauded as it shows a remarkable degree of persistence on the part of the High Court to reaffirm the universally recognized right and fundamental freedom of expression.

DEFIANCE OF COURT ORDERS

Unfortunately the courts can only go so far in asserting the rights of society. Once they make a pronouncement as to the correct legal position, the responsibility to enforce the law immediately shifts to the Executive organ of the state, it being the one that is in charge of the state machinery. In enforcing court orders, the Executive complies with its responsibility to ensure that citizens enjoy the right to the protection of the law which right is provided for in our constitution.

Despite the fact that the police simply ignored previous court orders in the ANZ matter, ZLHR finds the fact of eventual compliance with the court orders by the police to be a welcome relief. A culture of defiance of court orders severely undermines the judiciary and the justice delivery system and entrenches a culture of impunity and lawlessness. Such a state of affairs is not good for anyone in society as was demonstrated in the recent case involving the Member of Parliament Hon. Phillip Chiyangwa.

It is therefore hoped that the compliance with this court order marks the beginning of an era where the state will comply with every court order whether favourable to the state or not.

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