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Proclamation 4 of 2021

PROCLAMATION

by

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

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

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

AND WHEREAS the Judicial Service Commission, by letter dated 1st June, 2021, formally advised the President that the question of removal from office of the Honourable Mr. Justice Thompson James Mabhikwa, ought to be investigated;

AND WHEREAS section 187(4) of the Constitution of Zimbabwe, provides that, the President may, when he considers it advisable, appoint a tribunal consisting of three (3) or more members;

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

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

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

- (a) establish a Tribunal to inquire into the question of removal from office of the Honourable Justice Thompson James Mabhikwa;
- (b) appoint Retired Justice Maphios Cheda, as Chairperson of the Tribunal;
- (c) appoint the Secretary for Justice, Legal and Parliamentary Affairs to be the Secretary to the Tribunal;
- (d) direct that the Tribunal shall be held for a period of five (5) months from the date of swearing in of Members, at such appropriate venue as shall be determined by the Tribunal;
- (e) direct that the report shall be availed at the conclusion of the inquiry;
- (f) direct that the Terms of Reference shall be as follows —
 - (i) to investigate into the matter of the removal from office of Honourable Justice Thompson James Mabhikwa;
 - (ii) to investigate into the matter of Honourable Justice Mabhikwa’s conduct, whether it can be deemed to have been tantamount to gross misconduct;
 - (iii) to investigate whether or not the Honourable Justice Mabhikwa;
 - A. committed acts of sexual harassment;
 - B. possessed pornographic material;
 - (iv) to consider all information submitted by the Judicial Service Commission in order to arrive at an appropriate recommendation to the President;
 - (v) to investigate any other matter which the Tribunal may deem appropriate and relevant to the question of removal from office of a Judge in terms of the law;
 - (vi) to recommend on whether the Honourable Judge, is fit to hold office in the light of the foregoing; and

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- (vii) to report to the President, in writing, the result of the inquiry within a period of three (3) months from the date of swearing in of the Members;
- (g) direct that the inquiry shall be held both in public, or privately, as the exigencies of the Tribunal may determine; and
- (h) appoint the Members listed in the Schedule.

SCHEDULE

APPOINTMENT OF MEMBERS TO THE TRIBUNAL

1. Retired Justice Maphios Cheda, Chairperson.
2. Mr. Chaka Mashoko, Member.
3. Mrs. Phillipa Magnify Phillips, Member.

Given under my hand and the Public Seal of Zimbabwe at Harare this fifteenth day of June, in the year of our Lord two thousand and twenty-one.

E. D. MNANGAGWA,
President.

By Command of the President.

