

# Judicial Independence and Separation of Powers in South Africa and Zimbabwe: A Comparison through Selected Case Law



Paul T. Mtunuse<sup>1</sup> 

<sup>1</sup> School of Law, Faculty of Law, Humanities and Social Sciences, Walter Sisulu University, South Africa.

## ABSTRACT

The purpose of the paper was to explore the independence of the judiciary and the separation of powers in South Africa and Zimbabwe. The article used doctrinal research methodology to analyse existing primary and secondary data sources. The study argued that judicial independence and separation of powers, if observed, make a democracy in a state successful and strengthen the rule of law. The controversial issue is whether there is no judicial overreach when the courts preside over cases involving the executive and parliament. This often leads to another controversy of who should judge disputes, where the judiciary is alleged to have overstepped its powers by the other arms of government. The three arms of government are equal. The study submitted a finding that each arm of government must ensure that it does not overstep and interfere with the authority of the other two organs of government. The paper concludes that impartiality of the courts and separation of powers are observed in some cases in South Africa and Zimbabwe. However, in some instances, there had been debates about whether the courts had overstepped their powers. In contrast, interference with judicial independence had been alleged in other cases. The researcher recommends that all three arms of government should keep to their lanes. The study contributes to scholarship because it cautions against either judicial overreach or interference with judicial independence.

### Correspondence

Paul T. Mtunuse

Email:

[pmtunuse@wsu.ac.za](mailto:pmtunuse@wsu.ac.za)

### Publication History

Received: 15<sup>th</sup> May, 2025

Accepted: 9<sup>th</sup> September, 2025

Published online:  
28<sup>th</sup> October, 2025

### To Cite this Article:

Mtunuse, Paul T. "Judicial Independence and Separation of Powers in South Africa and Zimbabwe: A Comparison through Selected Case Law." *E-Journal of Humanities, Arts and Social Sciences* 6, no. 11 (2025): 2836 - 2842, <https://doi.org/10.38159/ehass.20256119>.

*Keywords: Independence of the Judiciary, Separation of Powers, Checks and Balances, Judicial Overreach, Arms of Government.*

## INTRODUCTION

De Vos and Freedman observe that John Locke developed the contemporary notion of separation of powers.<sup>1</sup> They argue that Locke was concerned with absolute monarchy and parliamentary control.<sup>2</sup> Hosten states that the French writer Montesquieu founded the separation of powers doctrine.<sup>3</sup> It envisions

<sup>1</sup> Pierre De Vos and Warren Freedman, "Basic Concepts of Constitutional Law," in *South African Constitutional Law in Context*. (Oxford University Press, 2021), 58; Willy J Hosten, *Introduction to South African Law and Legal Theory* (Butterworths, 1995), 965; Saul Porsche Makama, *Constitutionalism and Judicial Appointment as a Means of Safeguarding Judicial Independence in Selected African Jurisdictions* (University of South Africa, 2012), 10; Yolandi Cilliers, "Finding a Balance Between Judicial Activism and Judicial Deference" (University of Pretoria, 2014), 6.

<sup>2</sup> De Vos and Freedman, "Basic Concepts of Constitutional Law," 58.

<sup>3</sup> Hosten, *Introduction to South African Law and Legal Theory*, 965; George E Devenish, *A Commentary on the South African Constitution* (Butterworth-Heinemann, 1998), 12; Bernard Bekink, *Principles of South African Local Government Law* (Elsevier Butterworth Heinemann, 2006), 100.

dividing the state into *trias politica*: parliament, executive and courts.<sup>4</sup> An essential feature, especially in the United States of America, is “checks and balances”, whereby the three branches of government control each other.<sup>5</sup> The judiciary, for example, certifies that the parliament (Congress) does not make unconstitutional laws, and adjudicators are nominated by the president, who is part of the executive.<sup>6</sup> Still, justices' appointments must be ratified by the Senate and so on.<sup>7</sup> Checks and balances, it is submitted that are also a part of the South African and Zimbabwean systems of separation of powers.

The separation of powers should go with ‘checks and balances.’ However, the paper argues that the fact that each branch cannot function completely independently of the others may sometimes be problematic when one considers that there is, on the other hand, judicial independence. The Constitution requires the judiciary to be independent<sup>8</sup> because its role is to monitor the other two arms so that they do not abuse their powers.<sup>9</sup> On the other hand, these three arms of government should not interfere with each other's functions unless and only when permitted by the Constitution.<sup>10</sup> It is sometimes difficult to know when such an intrusion is or is not permitted by the Constitution. For instance, criticism by the executive or parliament of the judges can sometimes be thought of by some as an attempt to undermine judicial independence. The researcher submits, therefore, that it is sometimes difficult to balance “checks and balances” and judicial independence.

The Zimbabwe Constitution expressly mentions the separation of powers.<sup>11</sup> In contrast, it is submitted that the South African Constitution does not expressly mention the separation of powers,<sup>12</sup> though it is endorsed in its chapters and sections.<sup>13</sup> The paper submits that both Constitutions expressly embrace the supremacy of the Constitution.<sup>14</sup>

### Judicial independence

Independence of the judiciary was defined as the ability of the judges to do their constitutional duty free from real or superficial intrusion.<sup>15</sup> Nicholson states that a government minister was reported as having notified the President of the Law Council of Australia that ‘the reality is that judges are public

<sup>4</sup> De Vos and Freedman, “Basic Concepts of Constitutional Law,” 58; Hosten, *Introduction to South African Law and Legal Theory*, 965 and Devenish *A Commentary on the South African Constitution*, 12.

<sup>5</sup> Hosten, *Introduction to South African Law and Legal Theory*, 965; Devenish, *A Commentary on the South African Constitution*, 12; and Bekink, *Principles of South African Constitutional Law*, 100.

<sup>6</sup> Hosten, *Introduction to South African Law and Legal Theory*, 965.

<sup>7</sup> Hosten, *Introduction to South African Law and Legal Theory*, 965.

<sup>8</sup> See section 165(2) of the Constitution of the Republic of South Africa 1996 (hereinafter Constitution of 1996) and section 164(1) of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 (hereinafter Constitution of Zimbabwe 2013).

<sup>9</sup> However, the other argument, on the other hand, is that it is sometimes difficult to know who monitors the judiciary from abuse of its powers.

<sup>10</sup> See section 165(3) of the Constitution of 1996, which dictates that “No person or organ of state may interfere with the functioning of the courts,” and section 164(2)(a) of the Constitution of Zimbabwe 2013.

<sup>11</sup> Constitution of Zimbabwe 2013 section 3(2)(e). See Simbarashe Tembo, “Constitutional Reform in Africa: Positioning the New Constitutional Court of Zimbabwe in the Transformation of Civil and Political Rights” (University of KwaZulu-Natal, 2019), 57.

<sup>12</sup> Makama, *Constitutionalism and Judicial Appointment as a Means of Safeguarding Judicial Independence in Selected African Jurisdictions*, 48.

<sup>13</sup> De Vos and Freedman, “Basic Concepts of Constitutional Law,” 56. See Chapters 4, 5, 8 and sections 43, 85 and 165 of the Constitution of 1996.

<sup>14</sup> See section 2 of the Constitution of 1996, which dictates that “The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and obligations imposed by it must be fulfilled,” and section 2(1) of the Constitution of Zimbabwe 2013. See, however, Felix Dube, “Separation of Powers and the Institutional Supremacy of the Constitutional Court over Parliament and the Executive,” *South African Journal on Human Rights* 36, no. 4 (October 1, 2020): 293–318, <https://doi.org/10.1080/02587203.2021.1925954>, who advocates for the recognition of the institutional supremacy of the Constitutional Court as a doctrine on separation of powers. He argues that “the Constitutional Court is institutionally supreme to Parliament and the executive owing to its establishment as a *sui generis* institution with legal and political mandate in post-apartheid South Africa.” The researcher agrees with Dube that the Constitutional Court is supreme to the legislature and executive insofar as constitutional matters are concerned. The study, however, disagrees by arguing that the Constitutional Court is not supreme over the other two arms of government insofar as the authorities that have been conferred to them by the Constitution. Furthermore, institutional supremacy, in terms of parliamentary sovereignty, was abolished by the supremacy of the Constitution clause. The study submits, therefore, that in South Africa, only the Constitution is supreme and not the Constitutional Court as an institution.

<sup>15</sup> R.D. Nicholson, “Judicial Independence and Accountability: Can They Co-Exist?,” *The Australian Law Journal* 67, no. 6 (June 1, 1993): 405; Iain, Currie et al., “Judicial Authority,” in *The New Constitutional & Administrative Law*. (Juta Academic, 2001), 299, who posit that “Independence of the judiciary refers to two ideals of a democratic state. The first is that the judiciary should enforce the law impartially: judges should act without bias and should not be susceptible to external pressures or influence. The second, rooted in the doctrine of separation of powers, is that the judiciary should function independently of the legislature and executive.”

servants....’.<sup>16</sup> The perception among judges is that, measured by their public utterances and actions, many people in public life and the public generally share that view.<sup>17</sup> They perceive the judiciary as subservient to executive government.<sup>18</sup> Judges and lawyers are concerned that the independence of the judiciary is not generally comprehended. Consequently, there is a danger that its political value to the public may be lost.<sup>19</sup>

The author concurs with Nicholson that some people view judges as civil servants carrying orders from their master, the state. Therefore, such people believe that in cases involving the government as the other party to the proceedings, the court will always decide in favour of the state. The study differs from such perceptions. The article submits that such beliefs undermine the courts' integrity. Furthermore, as shown in some cases below, such opinions are often misleading and misconceived. Some of these decisions were against the state. It will be submitted that judges are independent,<sup>20</sup> even though the state pays them. The paper will look at the methodology, the South African Constitution, South African Constitutional Court decisions, Zimbabwe Constitution, Zimbabwe Supreme and High Court decisions, recommendations and conclusion.

## METHODOLOGY

The study used doctrinal research methodology to analyse existing primary and secondary data sources. Doctrinal research methods analyse legislation from statutes, journal articles, and cases. It is a literature review of legal writings, court judgments and academic comments.

## DISCUSSION

### Judicial Impartiality and the separation of powers in South Africa<sup>21</sup> Constitution of South Africa<sup>22</sup>

The Constitution creates a separation of powers between the parliament, the executive and the courts.<sup>23</sup> That was confirmed in the *Certification of the Constitution of the Republic of South Africa*.<sup>24</sup> It was decided government's lawmaking power was assigned to the legislature.<sup>25</sup> The executive power is entrusted to the president; the judicial power is entrusted to the courts.<sup>26</sup>

The Constitution firmly entrenches judicial impartiality.<sup>27</sup> The study submits that the Constitution guarantees impartiality and judicial independence. Additionally, judges are neutral and must decide cases without fear, no matter whether the case involves the president, government or anyone. They must uphold the rule of law at all costs. The researcher submits, further, that everyone, including the state, is bound by orders or decisions made by judges. Furthermore, decisions made by judges must be respected and enforced. In the subsequent part, the study will look at some decided cases by the Constitutional Court to see if impartiality of the courts and separation of powers are observed as required in the Constitution.

<sup>16</sup> Nicholson “Judicial Independence and Accountability: Can they Co-exist?” 404.

<sup>17</sup> Nicholson “Judicial Independence and Accountability: Can they Co-exist?” 404.

<sup>18</sup> Nicholson “Judicial Independence and Accountability: Can they Co-exist?” 404.

<sup>19</sup> Nicholson “Judicial Independence and Accountability: Can they Co-exist?” 404.

<sup>20</sup> See Francois Venter, *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States* (BRILL, 2021), 222, who observes that “Although there can be no guarantee that judges will not at times tend to deliver executive-minded or government-sympathetic judgments, it may be said that the independence of the judiciary, once appointed, is protected by the Constitution.”

<sup>21</sup> Anthony O. Nwafor, “The Lesotho Constitution and Doctrine of Separation of Powers: Reflections on the Judicial Attitude,” *African Journal of Legal Studies* 6, no. 1 (2013): 49–68, <https://doi.org/10.1163/17087384-12342020>.

<sup>22</sup> The Constitution of 1996.

<sup>23</sup> See Chapters 4, 5, 8 and sections 43, 85 and 165 of the Constitution of 1996.

<sup>24</sup> *Certification of the Constitution of the Republic of South Africa*, 1996; 1996 (4) SA 744 (CC) (hereinafter *Certification* case) and *S v Dodo* 2001 (5) BCLR 423 (CC) para 14. See Makama, “Constitutionalism and Judicial Appointment as a means of Safeguarding Judicial Independence in Selected African Jurisdictions,” 49.

<sup>25</sup> *Certification* case para 110 and Makama, “Constitutionalism and Judicial Appointment as a means of Safeguarding Judicial Independence in Selected African Jurisdictions,” 49.

<sup>26</sup> *Certification* case para 110 and *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC).

<sup>27</sup> The Constitution of 1996, s 165(2) stipulates that “The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.” See *Hlophe v Judicial Service Commission* [2022] 3 All SA 87 (GJ) para 119 (hereinafter *Hlophe* case) where the court observed that “The clear function of Section 165(3) is to secure the reality of judicial institutional independence and to secure the individual judge’s independence or autonomy.”

## Constitutional Court Judgments

Judicial independence and separation from the executive and legislature were clearly emphasised in the *South African Association of Personal Injury Lawyers v Heath*.<sup>28</sup> This matter involved a challenge against the President's nomination of a judge to lead a special investigating unit (SIU).<sup>29</sup> It was held that the matter was not concerned with the interference of the executive in the courts' terrain. However, the executive assigned a judiciary member, with the legislature's concurrence, to the functions near the 'heartland' of executive authority.<sup>30</sup> Separating the judiciary from the executive and legislature is a critical feature. The Constitution requires that judges guarantee that restrictions on exercising public authority are not violated. It is essential to execute this duty so that judges are seen as independent.<sup>31</sup> It was decided that the judge's nomination to lead the SIU was invalid.

The researcher submits that this was the court's proper and correct explanation of the Constitution. It was correctly declared by the court that appointing a judge to head an institution with executive powers was unlawful. As argued above, some public members view judges as government employees serving their master, the executive. Allowing judges to serve in executive institutions would perpetuate this public opinion that judges are not independent but only government officials serving their master. Courts should not only remain impartial from the executive but must also be seen as autonomous by community members.

In *Minister of Health v Treatment Action Campaign*,<sup>32</sup> the issue involved the refusal of the state to provide an anti-retroviral medication, nevirapine, in the public health division to prevent mother-to-child spread of HIV. The court recognised the separation of powers with the other two arms of the state. It was decided that the state rule did not conform to constitutional standards.<sup>33</sup> The government was ordered to develop and apply a complete and organised programme to gradually achieve the rights of pregnant women and their newborn babies to access health amenities to fight the mother-to-child spread of HIV.<sup>34</sup>

The study submits that the court acknowledged interference in the executive domain. However, such an intrusion was allowed by the Constitution itself. This means that the courts can interfere in the domains of the other arms of the state, provided that the Constitution permits such an intrusion. The study submits that in *Minister of Health v Treatment Action Campaign*,<sup>35</sup> the court decided against the state's programme.

Similarly, in *Government of the Republic of South Africa v Grootboom*,<sup>36</sup> the court decided against the state's housing program. It was held that section 26 obliges the government to make and apply a logical, organised plan intended to meet its responsibilities.<sup>37</sup>

However, in *Soobramoney v Minister of Health, KwaZulu-Natal*,<sup>38</sup> it was decided in favour of the government. Appellant was a 41-year-old jobless man who had continuing renal failure.<sup>39</sup> He wanted to be given regular renal dialysis, at state expense, to prolong his life. His claim was dismissed.

The researcher submits that it has been shown in some cases above that judicial impartiality and separation of powers are observed and adhered to by the South African courts. Additionally, against popular belief, it has also been proven that South African judges are independent, even though they are employed and paid by the state. Furthermore, some South African Constitutional Court cases have proved that some of its judgments were decided against the state, while others were for it. The study submits, therefore, that the South African judiciary, in most instances, decides cases independently.

<sup>28</sup> *South African Association of Personal Injury Lawyers v Heath* 2001 (1) BCLR 77 (CC) (hereinafter *South African Association of Personal Injury Lawyers* case).

<sup>29</sup> *South African Association of Personal Injury Lawyers* case para 5.

<sup>30</sup> *South African Association of Personal Injury Lawyers* case para 24.

<sup>31</sup> *South African Association of Personal Injury Lawyers* case para 25.

<sup>32</sup> *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC) (hereinafter *Treatment Action Campaign* case).

<sup>33</sup> *Treatment Action Campaign* case para 125.

<sup>34</sup> *Treatment Action Campaign* case para 135.

<sup>35</sup> *Treatment Action Campaign* case.

<sup>36</sup> *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC) (hereinafter *Grootboom* case).

<sup>37</sup> *Grootboom* case para 95.

<sup>38</sup> *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 (12) BCLR 1696 (CC) (hereinafter *Soobramoney* case).

<sup>39</sup> *Soobramoney* case para 1.

The study, in the following segment, will discuss the Zimbabwe Constitution, some decided cases of the Zimbabwe Supreme and High Court, to comprehend if impartiality of the courts and separation of powers are observed as required by the Constitution.

### **Impartiality of the judiciary and separation of powers in Zimbabwe Zimbabwe Constitution<sup>40</sup>**

The Constitution guarantees impartiality of the judiciary and separation of powers.<sup>41</sup> Chiduzo posits that impartiality of the judges is essential to safeguard human rights in a country founded on a constitutional democracy.<sup>42</sup> He argues that relentless intrusions on the impartiality of the judiciary in Zimbabwe subsequently added to the violation of human rights, as the people could not depend on the judiciary for their safeguard. Additionally, Chiduzo observes that, conscious of the important role of the courts in safeguarding human rights in many democracies, Zimbabwe's new Constitution must preferably be designed to strengthen the impartiality of judges through several judicial changes.<sup>43</sup>

### **Zimbabwe Supreme and High Court judgments**

The researcher submits, however, that in Zimbabwe, the judiciary made its own decisions, some of which were against the government. One such decision was the *Catholic Commission for Justice & Peace, Zimbabwe v A-G Zimbabwe*,<sup>44</sup> which was decided against the government. This case concerned four men who were found guilty of murder.<sup>45</sup> They were to be hanged in the next few days.<sup>46</sup> The court, whilst recognising that the authority to 'commute' a sentence of death lies with the executive, proceeded to set aside the death sentences and substituted them with imprisonment for life.<sup>47</sup>

However, in some cases, the decisions were for the state. The High Court, for instance, had the view that the judiciary had no jurisdiction to enquire into some legality matters. In *Commercial Farmers Union & Ors v Minister of Lands, Agriculture and Rural Resettlement & Ors*,<sup>48</sup> Chidyauku CJ commented that s 16B(3) of the Constitution ousts the jurisdiction of the courts to enquire into the legality of the acquisition of land in terms of s 16B(2)(a) of the Constitution. A litigant, in the face of the clear language of the Constitution, can only approach the courts for a review and for a remedy relating to compensation.<sup>49</sup>

In *Judicial Service Commission v Romeo Taombera Zibani*,<sup>50</sup> the court observed that it is not allowed for a court to prohibit the legal application of powers conferred by law. In the current case, the court *a quo* failed to evaluate whether it was 'constitutionally appropriate to grant the interdict'. In so doing, it neglected to observe the time-honoured doctrine of the separation of powers.<sup>51</sup>

The study submits that, though, as Chiduzo argues, there had been constant interferences with judicial independence in Zimbabwe, there were cases where the judiciary held on to its independence and

<sup>40</sup> Constitution of Zimbabwe 2013.

<sup>41</sup> Constitution of Zimbabwe 2013 section 3(2)(e) and section 164(1), which stipulates that "The courts are independent and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice." See *Judicial Service Commission v Romeo Taombera Zibani* SC 68/2017 (hereinafter Judicial Service Commission case).

<sup>42</sup> Lovemore Chiduzo, "Towards the Protection of Human Rights: Do the New Zimbabwean Constitutional Provisions on Judicial Independence Suffice?," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 17, no. 1 (2014): 368–418; he cites that "one of the examples of the Zimbabwean government's interference with the judiciary was when Gubbay CJ (as he then was) was forced to retire prematurely after he delivered a judgment in the case of *Commercial Farmers Union v Minister of Lands, Agriculture and Resettlement* 2000 2 ZLR 469 (SC). *In casu*, he had granted an interdict barring further land acquisitions by the government, as such acquisition[s] were unconstitutional and had been carried out in a violent manner."

<sup>43</sup> Chiduzo, "Towards the Protection of Human Rights: Do the New Zimbabwean Constitutional Provisions on Judicial Independence Suffice?," 369-612.

<sup>44</sup> *Catholic Commission for Justice & Peace, Zimbabwe v A-G Zimbabwe* 1993 (4) SA 239 (ZSC) (hereinafter *Catholic Commission* case).

<sup>45</sup> *Catholic Commission* case para B.

<sup>46</sup> *Catholic Commission* case para B.

<sup>47</sup> *Catholic Commission* case paras A and F.

<sup>48</sup> *Commercial Farmers' Union & Ors v Minister of Lands, Agriculture and Rural Resettlement & Ors* 2010 (2) ZLR 576 (H) (hereinafter *Commercial Farmers Union* case), the court held that owners or occupiers whose land has been acquired by the acquiring authority cannot challenge the legality of such acquisition in a court of law.

<sup>49</sup> *Commercial Farmers Union* case.

<sup>50</sup> *Judicial Service Commission v Romeo Taombera Zibani* [2017] ZWSC 68 (hereinafter *Judicial Service Commission* case). See *Zibani v JSC* [2016] ZHHC 797.

<sup>51</sup> *Judicial Service Commission* case.

kept it intact. It is submitted, further, that in some cases, the judiciary in Zimbabwe has shown signs of gaining back the respect it had.

## RECOMMENDATIONS

The study recommends that all three arms of government should keep to their lanes granted by the Constitution to maintain judicial impartiality and separation of powers, in both South Africa and Zimbabwe constitutional democracies. The researcher recommends, however, that the three branches of government, especially the judiciary, may intrude into each other's domains, provided that such an intrusion is allowed by the Constitution.

## CONCLUSION

The researcher submits that judicial impartiality and separation of powers are some requirements that a democratic state that claims to respect the rule of law should comply with. Separation of powers and judicial impartiality as democratic principles co-exist. Separation of powers means that the state authority is divided between the parliament, the executive and the judges, with suitable checks and balances. Indeed, no separation of powers is absolute.<sup>52</sup> Judicial independence means the functional independence of the courts from the other two arms of the state.

It is submitted that the government and the courts generally observe the separation of powers and judicial impartiality in South Africa and Zimbabwe. This has been shown in the selected cases of the South African Constitutional Court and the Zimbabwe Supreme and High Courts discussed above. It was shown that the courts observe the separation of powers and have applied their impartiality from the state independently.

The South African state has entrusted itself to respecting and supporting the independence of the judiciary. It has respected and abided by the decisions taken by the courts, and this has strengthened the respect for the rule of law in the country.

In Zimbabwe, though, it seems that the separation of powers and judicial independence have been compromised by persistent intrusion into the impartiality of the courts by the government over the years. However, there are reasonable indications that the judiciary seeks to regain its independence. The problem is still with the government, which seems inconsistent in observing the separation of powers and respecting the judiciary's autonomy.

The study submits that observing the separation of powers and independence of the judiciary is important for both South Africa and Zimbabwe's constitutional democracies, as well as other constitutional democratic countries in Africa. This will, in turn, guarantee respect for the African constitutional democratic countries by other internationally recognised democratic states.

## ACKNOWLEDGEMENTS

The author would like to acknowledge the valuable contribution made by Dr K Mpofu.<sup>53</sup> His immense contribution, especially to Zimbabwe legislation and case law, is highly appreciated. The writer acknowledges that this paper was first published as Mtunuse PT, "The Observance of Separation of Powers and Judicial Independence in South Africa and Zimbabwe," *WSU Law Journal* (2005) 27 (which is a non-accredited journal).

## BIBLIOGRAPHY

### Legislation

The Constitution of the Republic of South Africa 1996.

The Constitution of Zimbabwe Amendment (No. 20) Act 2013.

### Cases

*Catholic Commission for Justice & Peace, Zimbabwe v A-G Zimbabwe* 1993 (4) SA 239 (ZSC).

---

<sup>52</sup> *Certification* case para 109.

<sup>53</sup> School of Law, Faculty of Law, Humanities and Social Sciences, Walter Sisulu University, South Africa.

*Commercial Farmers Union v Minister of Lands, Agriculture and Resettlement* 2000 2 ZLR 469 (SC).  
*Commercial Farmers Union v Minister of Lands, Agriculture and Rural Resettlement* 2010 (2) ZLR 576 (SC).  
*Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC).  
*Hlopho v Judicial Service Commission* [2022] 3 All SA 87 (GJ).  
*Judicial Service Commission v Romeo Taombera Zibani* [2017] ZWSC 68.  
*Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC).  
*President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC).  
*S v Dodo* 2001 (5) BCLR 423 (CC).  
*Soobramoney v Minister of Health, KwaZulu-Natal* 1997 (12) BCLR 1696 (CC).  
*South African Association of Personal Injury Lawyers v Heath* 2001 (1) BCLR 77 (CC).  
*Zibani v JSC* [2016] ZHHC 797.

### Books and Articles

Bekink, Bernard. *Principles of South African Local Government Law*. Elsevier Butterworth Heinemann, 2006.

Chiduzo, Lovemore. "Towards the Protection of Human Rights: Do the New Zimbabwean Constitutional Provisions on Judicial Independence Suffice?" *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 17, no. 1 (2014): 368–418.

Cilliers, Yolandi. "Finding a Balance Between Judicial Activism and Judicial Deference." University of Pretoria, 2014.

Currie, Iain, eds, Johan de Waal, Pierre de Vos, Karthy Govender, and Heinz Klug. "'Judicial Authority,'" In *The New Constitutional & Administrative Law*. Juta Academic, 2001.

Devenish, George E. *A Commentary on the South African Constitution*. Butterworth-Heinemann, 1998.

Dube, Felix. "Separation of Powers and the Institutional Supremacy of the Constitutional Court over Parliament and the Executive." *South African Journal on Human Rights* 36, no. 4 (October 1, 2020): 293–318. <https://doi.org/10.1080/02587203.2021.1925954>.

Hosten, Willy J. *Introduction to South African Law and Legal Theory*. Butterworths, 1995.

Makama, Saul Porsche. *Constitutionalism and Judicial Appointment as a Means of Safeguarding Judicial Independence in Selected African Jurisdictions*. University of South Africa (South Africa), 2012.

Nicholson, R.D. "Judicial Independence and Accountability: Can They Co-Exist?" *The Australian Law Journal* 67, no. 6 (June 1, 1993): 404–26.

Nwafor, Anthony O. "The Lesotho Constitution and Doctrine of Separation of Powers: Reflections on the Judicial Attitude." *African Journal of Legal Studies* 6, no. 1 (2013): 49–68. <https://doi.org/10.1163/17087384-12342020>.

Venter, Francois. *Constitutional Comparison: Japan, Germany, Canada and South Africa as Constitutional States*. BRILL, 2021.

Vos, Pierre De, and Warren Freedman. "'Basic Concepts of Constitutional Law,'" In *South African Constitutional Law in Context*. Oxford University Press, 2021.

### ABOUT AUTHOR

Paul T. Mtunuse (LLD) is a Senior Lecturer & Non-Examining Chairperson (NEC), Research & Higher Degrees, School of Law, Faculty of Law, Humanities and Social Sciences at Walter Sisulu University, and an Advocate of the High Court of South Africa. His research interests include International Human Rights Law, Constitutional Law, Child Law, Interpretation of Legal Instruments, Labour Law, Cyber Law, Artificial Intelligence Law and Medical Law.