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Chairman had refused to recuse himself despite bias



Harare - A Zimbabwean court on Wednesday quashed a ban on a popular daily by a state media commission and ordered the body to review its decision to muzzle the newspaper under draconian media laws, a lawyer said. The Daily News, known for its anti-government line, and its sister paper, The Daily News On Sunday, were closed down in September 2003 on charges they violated the media laws. The media commission has twice refused to grant it a licence despite a Supreme Court ruling in March last year that threw out the ban on the newspaper. "The High Court has set aside the decision of the Media and Information Commission to refuse to grant Associated Newspapers of Zimbabwe a licence," said lawyer Mordecai Mahlangu, representing the publishers. "Justice Rita Makarau also ordered the MIC to reconsider ANZ's application for a licence to publish," he said. Lawyers for the newspaper had gone to court to challenge the decision of the media commission, arguing that the chairman of the body had refused to recuse himself from the case despite the Supreme Court ruling which found that he was was biased.

The commission said the company breached media laws by among other things employing unaccredited journalists, failing to submit copies of its newspapers and employing a reporter convicted of criminal defamation. Mahlangu said ANZ's application satisfied registration requirements but the media commission denied it a licence because of a previous breach of the Access to Information and Protection of Privacy Act. Once the country's best-selling daily, identified by its blue masthead, the Daily News has been reduced to a handful of former managers and journalists occupying a small office in central Harare. In its heyday, The Daily News had a circulation of 150 000 and offered an alternative voice to the state media, even though sales were mostly in cities and major towns. President Robert Mugabe signed the repressive media law in 2002, barring foreign correspondents from working in Zimbabwe and forcing all local journalists to seek accreditation to work

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ANZ can have application considered afresh — Judge

Court Reporter

ASSOCIATED Newspapers of Zimbabwe (ANZ), publishers of the Daily News and the Daily News on Sunday, can now have their application for registration with the Media and Information Commission (MIC) considered afresh, almost seven months after the commission denied the company registration.

High Court judge Justice Rita Makarau yesterday set aside the commission's decision

to deny ANZ a licence as a media service provider under the Access to Information and Protection of Privacy Act (AIPPA) after the commission's lawyers conceded there could have been a perception of bias, without any actual bias.

However, the judge refused to consider whether there had, in fact, been bias, as this had been dealt with by the Supreme Court, and refused the ANZ application to have the commission disbanded.

But the MIC was ordered to pay the costs of the application. In her judgment yesterday, Justice Makarau quashed the MIC decision of July 18 2005 in which it threw out ANZ's application for registration.

The ANZ titles were closed in September 2003 for operating without a licence. The media house had taken the application to the higher court seeking a review on the basis of procedural irregularity and alleged bias on the part of commission chairman Dr Tafataona Mahoso. The commission opposed the application insisting that the ANZ issue was properly dealt with. Justice Makarau noted that the Supreme Court had made a finding that Dr Mahoso made utterances that were likely to raise reasonable apprehensions that the ANZ would not get a fair hearing from the commission he chaired. But this Supreme Court finding was not of actual bias on the part of Dr Mahoso. No lower court could question a decision of the Supreme Court.

The ANZ had also requested the court to order the present commission disbanded as its decision could be tainted by Dr Mahoso's alleged bias. But the judge said there was nothing in the submissions of the ANZ on that aspect and MIC "is well advised to take this on board when next dealing with the media house's application.

"I, however, do not have power to order the appointing of a new commission as that issue is not before me and the appointment authority is not before me," she said.

"I cannot make an order binding a party that is not before me without first affording the party the right to be heard," Justice Makarau said refusing to order the constitution of a panel to determine the ANZ registration. She said in her view that would amount to judicial interference in an administrative function.

In July last year the full commission unanimously agreed that ANZ deliberately breached certain sections of AIPPA, by among other things, publishing their newspapers without a registration certificate.

The commission ruled that ANZ's breach of the section that deals with the registration of mass media service providers was inexcusable.