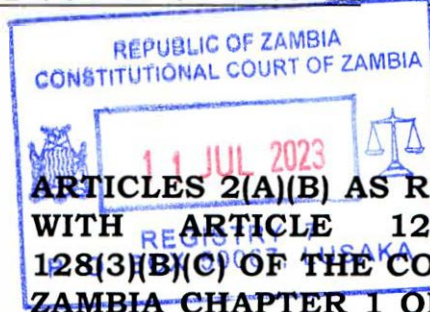


IN THE CONSTITUTIONAL COURT OF ZAMBIA 2022/CCZ/0029

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)



IN THE MATTER OF:

ARTICLES 2(A)(B) AS READ TOGETHER WITH ARTICLE 128(1)(A)(B) AND 128(3)(B)(C) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF:

ARTICLE 1, 3, 8, 9 (1)(A)(B), 45(2)(A)(C)(E), 67 AND 267(1) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF:

THE CONSTITUTIONALITY OF STATUTORY INSTRUMENT NO. 64 OF 2022 AND DECISIONS BY THE ELECTORAL COMMISSION OF ZAMBIA TO PROCEED TO CONDUCT AN ELECTION WITH CANDIDATES WHO RESIGNED ON THE BALLOT.

IN THE MATTER OF:

INTERPRETATION OF CONSTITUTIONAL RESIGNATION BY CANDIDATES AND EFFECT OF RESCISSION OF A VALID RESIGNATION ON ARTICLE 52(6) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF LAWS OF ZAMBIA.

IN THE MATTER OF:

CONTRAVENTION OF ARTICLE 52(6) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA BY AUTHORISING AND INCLUSION OF PERSONS ON THE BALLOT WHO HAD RESIGNED IN THE CONDUCT OF ELECTIONS HELD ON 21ST OCTOBER, 2022.

BETWEEN:

**INSTITUTE OF LAW, POLICY RESEARCH
AND HUMAN RIGHTS**

1ST PETITIONER

**PETER CHAZYA SINKAMBA
ISAAC MWANZA**

2ND PETITIONER

3RD PETITIONER

AND

ELECTORAL COMMISSION OF ZAMBIA

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

AND

BERNARD KANENGO

1ST INTERESTED PARTY

BOWMAN LUSAMBO

2ND INTERESTED PARTY

JOSEPH MALANJI

3RD INTERESTED PARTY

**Coram: Munalula DPC, Mulonda and Chisunka on 26th
January, 2023 and 11th July, 2023**

For the 1st Petitioner:

No appearance

For the 2nd Petitioner:

In Person

For the 3rd Petitioner:

In Person

For the 1st Respondent:

**Ms. T. Phiri - In House Counsel
Electoral Commission of Zambia**

For the 2nd Respondent:

**Mr. M. Muchende SC, Solicitor
General**

**Mr. N. Mwiya - Principal State
Advocate**

For the 1st Interested Party:

**Mr. C. Magubbwi of Messrs Magubbwi
and Associates**

**For the 2nd and 3rd Interested
Party:**

**Mr. J. Zimba of Messrs Makebi Zulu
Advocates**

JUDGMENT

Mulonda, JC, delivered the Judgment of the Court

Cases referred to:

1. **Kenson Kapemba v Mwanga Chileshe 2021/CCZ/A0016**
2. **Bampi Aubrey Kapalasa and Joseph Busenga v The Attorney General 2021/CCZ/0011/0014**
3. **Access Bank v Group 5, Zicon Business Park SCZ/852/2014**
4. **Joseph Malanji v Charles Mulenga, Electoral Commission of Zambia and Attorney General 2022/HP/EP/02**
5. **Bizwayo Newton Nkunika v Nyirenda and the Electoral Commission of Zambia 2019/CCZ/005**
6. **Governance Elections Advocate Research Services Zambia Limited v Attorney General and Electoral Commission of Zambia 2022/CCZ/0020**
7. **Kanengo v Attorney General and Electoral Commission of Zambia 2022/CCZ/0024**
8. **Nickson Chilangwa v Attorney General and Electoral Commission of Zambia 2022/CCZ/0026**
9. **Kabisa Ngwira v National Pensions Scheme Authority 2019/CCZ/0017**
10. **Joseph Malanji and Bowman Lusambo v The Electoral Commission of Zambia 2022/CCZ/0018**

Legislation referred to:

1. **The Constitution of Zambia (Amendment) Act No. 2 of 2016**
2. **The Electoral Process Act No. 35 of 2016**

INTRODUCTION

[1] The Institute of Law, Policy Research and Human Rights, Peter Chazy Sinkamba and Isaac Mwanza, (hereinafter, referred to as the Petitioners) filed a petition on 27th December, 2022 pursuant to Articles 1(5), 2(a)(b) and 128(1)(a)(b) and 128(3)(b)(c) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (hereinafter the Constitution). In the petition, the petitioners allege that Article 52(6) of the Constitution has been violated by the Electoral Commission of Zambia (hereinafter, the 1st respondent) by not cancelling the scheduled by-elections and holding fresh nominations following the resignation of two independent candidates from the scheduled by-elections.

BACKGROUND

[2] On 11th August, 2022 the 1st respondent announced that it had slated 15th September, 2022 as poll day for the Kwacha and Kabushi Parliamentary by-elections respectively and would, in this respect, receive and consider nominations on 25th August, 2022.

- [3] On 13th September, 2022 two days before poll day, the High Court through a stay order suspended the scheduled by-elections until the Order was discharged or vacated by the Court.
- [4] On 11th October, 2022, during the period when the stay order was still in force, the 1st respondent caused to be published the National Assembly By Elections (Kabushi Constituency No. 36 and Kwacha Constituency No. 22) (Election Date and Time of Poll) (No.3) Order, Statutory Instrument No. 64 of 2022.
- [5] Following the publication of Statutory Instrument No. 64 of 2022, the 1st respondent issued a press statement in which the 21st October, 2022 was scheduled as poll day for the two by-elections in Kabushi and Kwacha constituencies respectively. The statement further went on to state that the two independent candidates for Kabushi and Kwacha, Alfred Yombwe and Lawrence Kasonde respectively, who had earlier resigned on 12th and 13th September, 2022, had rescinded their resignations and would be contesting the by-elections in their respective constituencies.
- [6] Before the newly announced poll day of 21st October, 2022, this Court on 17th October, 2022 in its decision under cause

number 2022/CCZ/0023 held that the 1st respondent could not cancel the elections set for 15th September, 2022 as the same were stayed by the High Court on 13th September, 2022. In another decision of the 20th October, 2022 under cause number 2022/CCZ/0024, this Court determined that the proceedings before the High Court under which the elections, of 15th September, 2022 were suspended, lapsed and by implication the stay order that restrained the 1st respondent from cancelling the by-election and calling for fresh nominations following the resignations of the said Alfred Yombwe and Lawrence Kasonde stood discharged.

[7] Our decision of 20th October, 2022 was followed by the holding of the by-elections in Kabushi and Kwacha constituencies on the 21st October, 2022 with Alfred Yombwe and Lawrence Kasonde retained on the ballot.

[8] On 22nd October, 2022 the 1st respondent announced the results of the polls in the two constituencies namely Kabushi and Kwacha.

[9] In view of the above, the petitioners seek the following relief:

- i. **An interpretation of Article 52(6) of the Constitution to the effect that where an election candidate resigns, he/she cannot rescind their resignation and the purported rescission of such a resignation has effect on the operation of the said Article 52(6)**

- ii. **A declaration that Statutory Instrument No. 64 of 2022 issued by the respondent during the time the High Court order was in force under cause number 2022/HP/1327 was illegal and void.**
- iii. **A declaration that whenever a candidate resigns after close of nominations and before the date of an election, the respondent is bound and has no option other than cancelling an election and conducting fresh nominations.**
- iv. **A declaration that 1st respondent was obliged to cancel and conduct fresh nominations in Kabushi and Kwacha Constituencies when the High Court Proceedings had lapsed or declared by the Constitutional Court to have lapsed by effluxion of time on 20th October, 2021.**
- v. **A declaration and order that the participation of candidates who had resigned in Kabushi and Kwacha Parliamentary by-elections conducted by the 1st respondent on 21st October, 2022 rendered the election unconstitutional, illegal, null and void.**
- vi. **An order compelling the Respondent to conduct fresh nominations in Kabushi and Kwacha Constituencies and hold elections within 30 days from the date of fresh nomination.**

[10] The petitioners further call upon this Court to determine the following questions:

1. **Whether a candidate who resigns is authorized by the Constitution to rescind his resignation, and the effect of such rescission on the operation of Article 52(6) of the Constitution.**
2. **Whether statutory Instrument No. 64 of 2022 and the Respondent's exercise of authority to override the operation of Article 52(6) of the Constitution were legal and constitutional.**
3. **Whether the Respondent has authority override a stay order issued by the High Court or any other court.**
4. **Whether the Respondent has an option to retain a candidate on the ballot when such candidate resigns after close of**

nominations and before the date of an election, when such a candidate rescinds the decision to resign.

- 5. Whether the Respondent was obliged to cancel the election and conduct fresh nomination in Kabushi and Kwacha constituencies upon the stay order being discharged by decision of this Court on 20th October, 2022.**
- 6. Whether the participation of candidates who had resigned in Kabushi and Kwacha Parliamentary elections conducted by the Respondent on 21st October, 2022 was constitutional and legal.**
- 7. Whether the Respondent must conduct fresh nominations in Kabushi and Kwacha Constituencies and hold elections within 30 days from the date of fresh nominations**

THE RESPONDENTS' CASE

[11] Before we can consider the questions put before us by the Petitioners, we note that the 1st and 2nd respondents in their answers raise the issue of this Court's jurisdiction to hear the petition before us. The issue, being one of jurisdiction, demands that we consider it first as it determines whether or not we can entertain the petition.

[12] The 1st respondent filed in its answer to the Petition on 9th November, 2022. It contended that in the performance of its functions, it is guided by the Electoral process Act No. 35 of 2016, the Electoral Commission of Zambia Act No. 25 of 2016 and the Regulations promulgated under the stated laws.

- [13] According to the 1st respondent the petitioners seek to challenge the Parliamentary by-elections which it conducted on 21st October, 2022 in Kwacha and Kabushi Constituencies respectively. That this Court has no jurisdiction to hear and determine an election petition challenging a Parliamentary by-election conducted by the 1st respondent as a Court of first instance.
- [14] The 1st Respondent contends that the issues raised in the petition were similar and on all fours with the issues contained in the election petitions filed in the High Court to challenge the elections conducted by the 1st respondent on 21st October, 2022 in Kwacha and Kabushi Constituencies under cause numbers 2022/HP/EP/002 and 2022/HP/EP/003.
- [15] It further contends that the issues raised in the petition have either been adjudicated upon by this Court or are pending hearing or Judgment under the following cause numbers; 2022/CCZ/0020, 2022/CCZ/0023, 2022/CCZ/0024 and 2022/CCZ/0026. That the petitioners' petition is an abuse of court process as it seeks to relitigate issues pending determination before this Court and the High Court. With respect to the petitioners' contention regarding Statutory

Instrument No. 64 of 2022, it was the 1st respondent's submission that it was issued in line with Article 52(3) of the Constitution and that the petitioners had not shown how the Constitution had been breached by the issuance of Statutory Instrument No. 64 of 2022. That the petitioners were not entitled to the relief that they sought in the petition.

[16] The 1st respondent's affidavit verifying facts mirrored the issues stated in its answer and skeleton arguments in opposition.

[17] In its skeleton arguments, the 1st respondent submitted that this Court has no jurisdiction to hear and determine an election petition challenging a Parliamentary by-election conducted by the 1st respondent as a Court of first instance. The basis for this submission was that Article 128(1) (d) provides for the jurisdiction of this Court only to hear appeals relating to election of Members of Parliament and councillors.

[18] We were referred to the case of **Kenson Kapemba v Mwanga Chileshe**¹ wherein we guided that:

What is of relevance to this question is the provisions of Article 128(1)(d) of the Constitution which gives the Constitutional Court jurisdiction to hear and determine appeals relating to election of Members of Parliament and Councillors. Article 128 of the Constitution

distinguishes the Court's appellate jurisdiction from its original jurisdiction and in terms of appellate jurisdiction, the Constitution has restricted or limited the jurisdiction of the Court to appeals relating to election of Member of Parliament and Councillors.

[19] It was further submitted that the petition and the affidavit verifying facts in support of the petition raise issues that have been extensively considered and determined by this Court or pending under various cause numbers both in the High Court and this Court.

[20] In the 2nd respondent's Answer, it was also contended that the petitioners sought to challenge the Parliamentary by-elections for Kabushi and Kwacha Constituencies conducted by the 1st respondent on 21st October, 2022 and this Court has no jurisdiction to hear and determine such petition as a Court of first instance.

[21] In the 2nd respondent's skeleton arguments it was submitted that the issues raised in the Petition were an abuse of Court process and in support of the 1st respondent's argument anchored on our decision in the case of **Bampi Aubrey Kapalasa & Joseph Busenga v The Attorney General**² wherein we held that:

Where there appears to be an abuse of the process of the court, Order 18 rule 19(1) (d) of the White Book provides that a court can dismiss an action on the ground of abuse of court process. In addition to what is provided for in Order 18 rule 19 of the White Book, courts have broad inherent power to deal with and dismiss actions on account of abuse of process. This is succinctly stated in the explanatory notes at paragraph 18/19/15 of the white book...

[22] It was also submitted that this Court has no jurisdiction to hear election petitions as a court of first instance. We were referred to Article 73 of the Constitution which gives the High Court jurisdiction to hear election petitions in Parliamentary elections. A plethora of authorities were cited to support the arguments regarding the importance of a court's jurisdiction to hear and determine matters.

[23] In the alternative it was submitted that the 2nd respondent agreed that the Constitution is the Supreme Law of the Republic of Zambia and any written law, customary law or customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.

[24] In the 2nd respondent's oral submission, learned Solicitor General Muchende SC submitted that there was no specific provision of the Constitution that was alleged to have been contravened. It was his submission that the Court through this matter could guide on the structure of a petition.

- [25]** It was further submitted that relief (i) and (ii) are calculated to annul the just ended election. It was argued that this Court must not fall for the bait of even making an interpretation of Article 52(6) of the Constitution because the end game of these remedies is to challenge the by-elections for Kabushi and Kwacha constituencies. That this Court has no such jurisdiction as a court of first instance as is stipulated in Article 73(1) and 73(3) of the Constitution.
- [26]** It was further submitted that when one critically examines remedies (iii) to (vi), they are calculated to impugn the nominations. That this again is a preserve of the High Court at first instance as provided by Article 52(4) and (5) of the Constitution. It was submitted that there was a multiplicity of actions by the Petitioners as the High Court had delivered Judgments in relation the election petitions for the Kabushi and Kwacha by elections. It was his contention that this Petition was wrongly before this Court.
- [27]** It was further submitted that the issue of the resignations of Alfred Yombwe and Lawrence Kasonde and the need to call for fresh elections within 90 days was addressed in the election Petitions that were before the High Court and were dismissed.

That this Court should exercise caution on that particular issue as the Court was at risk of going ahead of itself when the two petitions where these issues raised are before this Court on appeal. We were referred to the case of **Access Bank v Group 5, Zicon Business Park**³ where the Supreme Court held that there ought to be finality to litigation.

[28] It was submitted that in the case of **Joseph Malanji v Charles Mulenga and 2 Others**⁴, the Judgment of the High Court in Kitwe indicated that the relief sought under (i) and (ii) were matters that were before the Constitutional Court and therefore that Court lacked jurisdiction to delve into those issues.

[29] In the 2nd petitioner's reply it was contended that this petition is not an election petition challenging a parliamentary by-election conducted by the 1st respondent on 21st October, 2022 but related to allegations on acts or omissions by the 1st respondent which contravened Article 52(6) of the Constitution. It was upon this premise that the 2nd petitioner contended that this Court has jurisdiction to hear and determine the allegations as a court of first instance.

[30] It was the 2nd petitioner's contention that a review of the issues raised in cause numbers 2022/HP/EP/002 and 2022/HP/EP/003 shows that the matters raised in this petition are different as the issues raised have nothing to do with election petitions. Further, that cause numbers 2022/CCZ/0020, 2022/CCZ/0023, 2022/CCZ/0024 and 2022/CCZ/0026 raised different issues from those in this petition. The 2nd petitioner reiterated that this petition is not an abuse of court process nor does it seek to relitigate issues already determined by this Court.

[31] In the skeleton argument in reply it was submitted that it is erroneous for the 1st respondent to allege that this petition was tantamount to an election petition and that this argument has no basis as the petition was filed pursuant to Article 2(a)(b) as read with Article 128(1)(a)(b) and 128(3)(b)(c) and Article 67 of the Constitution. That the High Court has no jurisdiction to determine the Constitutionality of a statutory instrument. The Petitioners submitted that it is only this Court that has the jurisdiction to hear any question on the constitutionality of a statutory instrument as stipulated in Article 67 of the Constitution.

[32] It was further submitted that this petition was challenging the constitutionality of the 1st Respondent's action which contravened Article 52(6) of the Constitution. We were referred to our ruling in the case of **Bizwayo Newton Nkunika v Nyirenda and the Electoral Commission of Zambia**⁵ where this Court ruled that the Constitution has conferred on this Court the jurisdiction to hear petitions that allege contravention of the Constitution. It was submitted that the Court is conferred with such jurisdiction under Article 128(1)(d).

[33] It was submitted that there is a thin line between an election petition and a Constitutional petition. That it is the mode of commencement that determines the jurisdiction of this Court to hear alleged constitutional contraventions. It was further submitted that it was a misdirection by the 1st respondent alleging that this constitutional petition is seeking to challenge the election of members of Parliament when it is not.

[34] The petitioners submitted that the issues for determination in contradistinction to other matters were, firstly the constitutionality of Statutory Instrument No. 64 of 2022, Secondly, the decision by the 1st respondent made on 11th

October, 2022 to authorize and include persons who had resigned on the ballot for the elections that took place in Kwacha and Kabushi Constituencies in contravention of the Constitution. Lastly, an interpretation of Article 52(6) of the Constitution for purposes of determining the alleged breach of the Constitution.

[35] It was further submitted that the issues for determination in the case of **Governance Elections Advocate Research Services Zambia Limited v Attorney General and Electoral Commission of Zambia**⁶ were the applicability of Article 52(6) to independent candidates and the 2nd Respondent's obligation to cancel an election in accordance with section 31(2) of the Electoral Process Act. That this matter does not deal with the withdrawal of a candidate from an election.

[36] It was the petitioners' submission that in the case of **Bernard Kanengo v Attorney General and Electoral Commission of Zambia**⁷ the Applicant sought the interpretation of Article 52(4) of the Constitution. Further that in the case of **Nickson Chilangwa v Attorney General and Electoral Commission of Zambia**⁸ this Court was moved by way of Originating Summons where the Applicant sought the Court's

interpretation on the meaning of resignation from an election and specifically whether an independent candidate who withdraws from the election can trigger the holding of fresh nominations.

[37] It was contended that the difference between the **Nickson Chilangwa**⁸ case and this matter is that in the present case, the petitioners allege contravention of the Constitution by the 1st respondent when it authorized and included candidates on the ballot who had resigned. That in the process of determining the alleged breach, the Court was invited to determine the effect of rescission of a resignation on the operation of Article 52(6) of the Constitution.

[38] It was the petitioners' argument that this Court has jurisdiction to hear and determine the petition in which they are alleging breach of Article 52(6) of the Constitution by the 1st respondent's decision to authorize and include candidates who had resigned on the ballot and to interpret Article 52(6) of the Constitution.

[39] With respect to the petitions in the High Court under cause numbers 2022/HP/EP/002 and 2022/HP/EP/003, it was

submitted that those petitions were election petitions and alleging the following:

- i. **Non-compliance of the law by the respondent in the conduct of an election in Kwacha and Kabushi constituencies;**
- ii. **That the action of the respondent prevented the petitioners from exercising their right provided by the Act to contest elections in Kwacha and Kabushi constituencies; and**
- iii. **That the Members of Parliament from Kwacha and Kabushi constituencies elected from an elected held on 21st October, 2022 were not duly elected as Members of Parliament.**

[40] It was submitted that these issues were not raised in the present case nor do the petitions before the High Court seek to challenge the constitutionality of the statutory instrument. It was submitted that the petition also sought the interpretation of a constitutional provisions to arrive at a decision.

CONSIDERATION AND DECISION

[41] From the outset, we note with concern that the petitioners have moved this Court under both Article 128 (1) (a) and (b) to seek two types of relief. Under Article 128 (1) (a) they seek interpretation of Article 52(6). Under 128 (1) (b) read with 128 (3), they allege contraventions and seek declarations and orders of illegality and nullity against the 1st Respondent for actions relating to the same Article 52(6). This approach is not

tenable for the following reason. When Article 128 (1) and (3) are read with Order IV rule (1) and (2) of the Constitutional Court Rules Statutory Instrument No. 37 of 2016, commencement of proceedings in pursuit of interpretation as distinct from an allegation of a contravention is by originating summons and not petition. The reasons for distinguishing the modes of commencement were clarified in the case of **Kabisa Ngwira v National Pensions Scheme Authority**⁹. As the Petitioners have come by petition we deem the relief under Article 128 (1) (a) improperly before Court and confine ourselves to the relief sought under Article 128 (1) (b) read with Article 128 (3).

[42] The jurisdiction of the Constitutional Court in election matters is provided for under Article 128 (1) (c) and (d) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (Constitution). Of particular interest in this matter is paragraph (d) clause 1 which only assigns appellate jurisdiction to this Court in election matters at parliamentary level. The issue then that falls for our determination, within the context of jurisdiction, is whether the petition before us is essentially an election petition that seeks to impugn the

Kabushi and Kwacha parliamentary by-elections respectively within the context of Article 73(1) of the Constitution as contended by the 1st and 2nd respondents.

[43] The 1st respondent contends that the issues raised in this petition are on all fours with the issues contained in the election petitions filed in the High Court for Zambia impugning the elections of 21st October, 2022 in Kwacha and Kabushi Constituencies under cause numbers 2022/HP/EP/002 and 2022/HP/EP/003 respectively.

[44] We have had sight of the judgments delivered in the above mentioned petitions. We note that in the Kwacha Parliamentary petition decision cause number 2022/HP/EP/002, the Court was called upon to consider the issue of whether or not the 1st respondent's failure to conduct fresh nominations following the resignation of the Independent candidates rendered the elections null and void.

[45] Similarly, the High Court in the Kabushi Parliamentary petition under cause 2022/HP/003 was moved to nullify the election primarily on account of the 1st respondent's conduct during the nominations.

[46] In *casu*, the petitioners have raised questions for determination under Article 52(6). A thorough review of the remedies sought by the petitioners reveal that they seek to impugn the nominations of the two independent candidates who purportedly resigned from the Kwacha and Kabushi by-elections. The petitioners have ultimately asked, as a relief, for this Court to order fresh nominations for the Kwacha and Kabushi by elections on account that the 1st respondent failed to cancel the election after the purported resignations by two independent candidates.

[47] This matter raises issues challenging the rescission of the purported resignations of the two independent candidates from the elections after the close of nomination. The petitioners have gone further to ask us to order fresh nominations.

[48] We find it necessary to restate the provisions of Article 52. Article 52(1) provides that:

- (1) **A candidate shall file that candidate's nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.**

[49] Further, Article 52(2) to (4) provides that:

- (2) **A returning officer shall, immediately on the filing of a nomination paper, in accordance with clause (1), duly reject**

the nomination paper if the candidate does not meet the qualifications or procedural requirements specified for election to that office.

(3) The information contained in a nomination paper and affidavit shall be published by the Electoral Commission, as prescribed.

(4) A person may challenge, before a court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty-one days of its lodgement

[50] It is our view that all matters relating to election nominations are clearly provided for in Article 52. We therefore cannot determine the issues raised without touching on whether the nominations of the two Independent candidates Lawrence Kasonde and Alfred Yombwe were valid at the time of elections. It is our considered view that the petitioners are attempting to challenge nominations premised on the relief sought. We have already held in our decision in the case of **Joseph Malanji and Bowman Lusambo v The Electoral Commission of Zambia**¹⁰ that issues pertaining to election nominations are the preserve of the High Court within a specified time frame and can only be raised in this Court on appeal.

[51] The matter before us seeks to impugn the nominations of the independent candidates who participated in the Kwacha and Kabushi by-elections. It is our view that addressing these issues will require us to consider whether maintaining the two

independent candidates as nominees in the election was within the law. It is on this premise that we form the view that this petition is a challenge on nominations which this Court has no jurisdiction to hear. Such a challenge is to be made within 7 days from the close of nomination to the High Court. Or where this window closes but concerns the management of elections by the 1st respondent at nomination and post nomination stages, during an election petition.

[52] As stated above this Court is only clothed with appellate jurisdiction and all other matters at Parliamentary level are the preserve of the High Court sitting as a Court of first instance. We therefore take the view and find that this Court has no jurisdiction to entertain this matter. On that account we dismiss the petition.

[53] Before concluding, we further recommend that the rules of this Court be amended to provide for a sieving mechanism that will ensure that matters not properly before this Court are disposed of promptly.

[54] Before we determine the issue of costs we wish to consider the context within which this matter was commenced. We do so in view of both the 1st and 2nd Respondent's submissions alleging

abuse of the process of Court, which allegation cannot be treated lightly. We say so because this petition was filed before us on 27th December, 2022, well after other actions raising the same issues had been filed in both the High Court and this Court. We specifically refer to the nomination petition filed in the High Court, two election petitions filed before the same court and multiple actions for interpretation of Article 52 commenced before us. This petition therefore raised the spectre of this Court rendering conflicting decisions and compromising the liberty of the High Court to deal with the petitions before it fully and as it saw fit. In our view, the petitioners' behavior constituted abuse of process and we unreservedly condemn it. Repetition of such behavior before this Court will likely trigger an award of costs.

[55] We however order that each party bears their own costs.



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M.M. MUNALULA, JSD
CONSTITUTIONAL COURT JUDGE



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P. MULONDA
CONSTITUTIONAL COURT JUDGE



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M. K. CHISUNKA
CONSTITUTIONAL COURT JUDGE