

**FOR YOUR SIGNATURE PLEASE**

Munalula, PC, ✓ 20/06/2024

Shilimi, DPC, ✓ 20/06/2024

Sitali, JC, ✓ 21.06.2024

Mulonda, JC, ✓ 21/06/2024

Mulenga, JC, ✓ 21/06/2024

Musaluke, JC, 21/06/2024

Chisunka, JC, ✓ 24/6/2024

Mulongoti, JC, ✓ 24/6/2024

Mwandenga, JC, 21/06/2024

Kawimbe, JC, ✓ 18/06/2024

Mulife, JC, ✓ 25/06/2024

IN THE CONSTITUTIONAL COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(Constitutional Jurisdiction)

2023/CCZ/0025

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 60 (2) (d) and (e) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 74 (2) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA

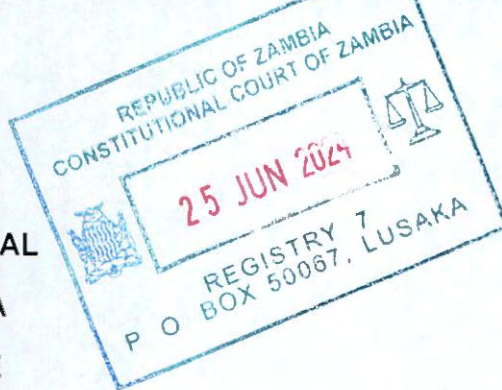
IN THE MATTER OF: RULE 43 OF THE PARLIAMENTARY STANDING ORDERS OF 2021

IN THE MATTER OF: THE APPOINTMENT AND ELECTION OF THE LEADER OF THE OPPOSITION IN THE NATIONAL ASSEMBLY

IN THE MATTER OF: THE DECISION OF THE SPEAKER OF THE NATIONAL ASSEMBLY TO ACCEPT THE APPOINTMENT OF THE LEADER OF THE OPPOSITION IN THE NATIONAL ASSEMBLY WITHOUT AN ELECTION

BETWEEN:

MOSES SAKALA  
AND  
ATTORNEY GENERAL  
MORGAN NG'ONGA  
BRIAN MUNDUBILE



PETITIONER

1<sup>st</sup> RESPONDENT2<sup>nd</sup> RESPONDENT3<sup>rd</sup> RESPONDENT

Coram: Munalula PC, Shilimi DPC, Sitali, Mulonda, Mulenga, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe, Mulife, JJC on 19<sup>th</sup> April and 25<sup>th</sup> JUNE, 2024.

For the Petitioner: Mr. S.F Chipompela, Mr. A. Samabi and Mr. M. Mwango of Messrs Joseph Chirwa and Company

For the 1<sup>st</sup> Respondent: Mr. M. Muchende, SC – Solicitor General, Mr. C. Mulonda – Principal State Advocate, Ms. A. Chisanga – Principal State Advocate, Mrs. B.M Kamuwanga – Senior State Advocate, Mr. J. Sianabo – Director Legal, National Assembly and Mr. S. Banda, Legal Officer – National Assembly

**For the 2<sup>nd</sup> Respondent:** No appearance

**For the 3<sup>rd</sup> Respondent:** Mr. P. Chulu, Mr. C.M Mukandila and Mr. D. Chembo of Messrs Patrick Chulu Legal Practitioners

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## JUDGMENT

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**Cases referred to:**

1. Dr. Daniel Pule and 3 Others v Attorney General and Others CCZ Selected Judgment No. 60 of 2018
2. Steven Katuka and Law Association of Zambia v The Attorney General and Ngosa Simbyakula and 63 Others, CCZ Judgment No. 29 of 2016
3. Milford Maambo and Others v The People, CCZ Selected Judgment No. 31 of 2017
4. Benjamin Mwelwa v Attorney General and Another 2020/CCZ/007
5. Christopher Shakafuswa and Another v Attorney General and Another 2018/CCZ/005
6. John Sangwa v Attorney General 2021/CCZ/0025

**Legislation referred to:**

1. The Constitution of Zambia, (Amendment) Act No. 2 of 2016
2. The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

**Other works referred to:**

1. Black's Law Dictionary by Henry Campbell Black, M.A, Abridged 6<sup>th</sup> Edition by the Publishers Editorial Staff, West Publishing Co. 1991, USA
2. Balmer, Elliot on Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition, 2021, International Institute for Democracy and Electoral Assistance

*Introduction and factual background*

[1.1] On 12<sup>th</sup> August, 2021 Zambia held tripartite general elections, under the Constitution of Zambia (Amendment) Act No. 2 of 2016 (Constitution).

The main opposition political party, at the material time, the United Party for National Development (UPND), emerged as winner at all levels, that is Presidential, Parliamentary and Local Government. The UPND further obtained the highest number of seats in the National Assembly, while the Patriotic Front (PF) Party was declared as the largest opposition party, with 58 seats in the National Assembly.

**[1.2]** On 30<sup>th</sup> August, 2021, the PF Party through its then Secretary General Mr. Davies Mwila, communicated to the Speaker of the National Assembly (Speaker) that Hon. Brian Mundubile (3<sup>rd</sup> respondent herein), Member of Parliament (MP) for Mporokoso Constituency had been selected in accordance with the PF Party structure, as leader of the opposition in the National Assembly. The petitioner who described himself as a law abiding Zambian citizen and an active member of the PF Party, was aggrieved by Hon. Mundubile's appointment alleging that no elective process was held within the party. The result, thereby amounted to a breach of the Constitution.

**[1.3]** In addition, the petitioner faulted the Speaker for accepting Hon. Mundubile's appointment because it was unconstitutional. Therefore, that Hon. Mundubile was not entitled to the privileges and entitlements of the office of leader of the opposition.

[1.4] Subsequently, the petitioner filed this petition on 29<sup>th</sup> November, 2023, alleging that the 2<sup>nd</sup> respondent (as Secretary General of the PF Party) violated Article 74 (2) of the Constitution, by purporting to have appointed the leader of the opposition, without conducting an election in the PF party and from amongst the opposition MPs. Further, no caucus meeting was held between the members of the PF party Central Committee and MPs to support the appointment. The petitioner further alleged that the 2<sup>nd</sup> respondent contravened Article 60 (2) (d) and (e) of the Constitution by failing to exercise internal democracy as other candidates within the PF Party were prevented from contesting the election of leader of the opposition.

[1.5] The petitioner also alleged that the 1<sup>st</sup> respondent through the Speaker violated Rule 43 of the National Assembly of Zambia Standing Orders, 2021 and Article 74 (2) of the Constitution by recognising Hon. Mundubile's appointment. According to the petitioner, the Speaker's role was not merely confined to receiving the notification of the appointment and/or election of the leader of opposition. Rather, that as a Zambian citizen and Presiding Officer of the National Assembly, she was under a duty to protect the Constitution, by ensuring that all affairs conducted in the National Assembly, are in conformity with the Constitution. Hence, the Speaker should have made inquiries on whether the PF Party had complied with the law.

**[1.6]** The petitioner sought the following remedies:

- i. *A declaration that the appointment of Hon. Brian Mundubile, as leader of the opposition was null and void ab initio, as it was done in contravention of Article 74 (2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016.*
- ii. *A declaration that the 1<sup>st</sup> respondent through the Speaker of the National Assembly contravened Article 74 (2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016, as well as Rule 43 of the National Assembly Standing Orders, by accepting the appointment of Hon. Brian Mundubile as leader of opposition in the National Assembly and allowing him to draw all entitlements accrued for the said office.*
- iii. *A declaration that the 2<sup>nd</sup> respondent contravened the provisions of Article 60 (2) (d) of the Constitution by failing to exercise internal democracy as provided for under the said Article.*
- iv. *An order that all monies and monetary benefits obtained by Hon. Brian Mundubile by virtue of his illegal tenure of office, be accounted for and recovered.*

*Petitioner's case*

**[2.1]** The petitioner in his founding and replying affidavits dated 29<sup>th</sup> November, 2023, 2<sup>nd</sup> February and 6<sup>th</sup> March, 2024, sought to paint a

picture that Hon. Mundubile's selection as leader of the opposition, was illegal. He had not been elected by the members of the PF party, in particular, that no elections were held in accordance with the PF Party constitution, and in which the MPs from the opposition formally participated in. In addition, there were no minutes of the PF Party produced before the Speaker to indicate that votes were cast for the position of leader of the opposition.

[2.2] He further averred that the Speaker had a duty to request for the tally of all the votes cast and meeting minutes record, where the outcome of the vote was concluded. This was for the reason that, the result of the election process of leader of the opposition, had a direct bearing on the affairs of the National Assembly. Thus, the Speaker should not have accepted Mr. Davis Mwila's letter because it contravened the Constitution and the National Assembly of Zambia Standing Orders of 2021. The result being that Hon. Mundubile's appointment was null and void *ab initio*.

[2.3] In support of the petitioner's case, learned counsel filed skeleton arguments on 29<sup>th</sup> November, 2023 where he firstly submitted that the petitioner had *locus standi* in this matter, in terms of Article 43 (2) (a) of the Constitution that: -

*A citizen shall endeavour to –*

- a. *acquire basic understanding of this Constitution and promote its ideals and objectives*

[2.4] He fortified his submission by citing the case of *Dr. Daniel Pule and 3 Others v Attorney General and Others*<sup>1</sup> where the Court held that:

*In our considered view, one of the ways in which citizens can acquire this understanding and be able to promote its ideals and objectives is by seeking authoritative interpretation of the provisions in the Constitution*

[2.5] Counsel next submitted that the petitioner's case was based on the interpretation of Article 74 (2) of the Constitution as read with Rule 43 of the National Assembly of Zambia Standing Orders, 2021 and Article 60 (2) (d) and (e) of the Constitution. As such, the Court had properly been moved under Article 128 of the Constitution to hear the petition.

[2.6] Our attention was drawn to Order 4 Rule 2 (2) of the Constitutional Court Rules as the basis upon which, the petition was presented as follows: -

*Except as otherwise provided in the Constitution, the Act and these Rules, all matters under the Act brought before the Court shall be commenced by petition.*

[2.7] Counsel further submitted that the 2<sup>nd</sup> respondent violated Article 74 (2) of the Constitution, by purporting to appoint the leader of the opposition without holding an election. In consequence, the 1<sup>st</sup> respondent, through the Speaker violated Rule 43 of the National Assembly of Zambia Standing Orders, 2021 when she accepted the communication.



[2.8] Counsel went on to posit that the 2<sup>nd</sup> respondent, as the PF Secretary General, contravened Article 60 (2) (d) and (e) of the Constitution on: -

- (d) *Promoting and practicing democracy through regular, free and fair elections in political parties; and*
- (e) *Respecting the right to participate in the affairs of a political party.*

[2.9] In construing the constitutional provisions, counsel urged the Court to adopt the literal rule of statutory interpretation, which was espoused in the case of *Steven Katuka and Law Association of Zambia v The Attorney General and Ngosa Simbyakula and 63 Others*<sup>2</sup>.

[2.10] Counsel reinforced his submission by citing the case of *Milford Maambo and Others v The People*<sup>3</sup>, where the Court stated that: -

*The primary principle in interpreting the Constitution is that the meaning of the text should be derived from the plain meaning of the language used. Only when there is ambiguity or where a literal interpretation will lead to absurdity should other principles of interpretation be resorted to.*

[2.11] According to counsel, there was no ambiguity in Article 74 (2) of the Constitution, which would require the Court to resort to any other form of statutory interpretation. This was due to the fact that the Article simply prescribed that the leader of the opposition must be elected. Placing reliance on the Oxford Advanced Learner's Dictionary (citation not provided) at page 471, counsel cited the definition of the word "elect" as follows: -

1. *To choose somebody to do a particular job by voting for them.*
2. *To choose to do something.*

[2.12] Counsel then adverted to the definition of the word “appoint”, in the Black’s Law Dictionary Abridged 6<sup>th</sup> Edition at page 65, as follows:-

*To designate, choose, select, assign, ordain, prescribe, constitute, or nominate. To allot or set apart. To assign authority to a particular use, task, position or office. Term is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. It is usually distinguished from “elect,” meaning to choose by a vote of the qualified voters of the city; though this distinction is not invariably observed.*

[2.13] It was next submitted that after applying the definition of “elect” to Article 74 (2) of the Constitution, the import was that the leader of the opposition ought to have been elected by those who were entitled to vote. In counsel’s view, those who were eligible to cast a vote, were the members of the opposition party with the largest number of seats in the National Assembly. Hence, any action purporting to appoint the leader of the opposition by the PF Party President or the Speaker would not only be null and void but in contravention of the Constitution.

[2.14] In the alternative, counsel offered the argument that the Court could apply the principle of *eiusdem generis* defined in the Black’s Law Dictionary Abridged 6<sup>th</sup> Edition at page 357 as follows: -

*Of the same kind, class, or nature. In the circumstances construction of laws, wills, and other instruments, the *eiusdem generis* rule is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general or class as those specifically mentioned. Under “*eiusdem generis*” canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.*

[2.15] In fortifying the submission, counsel averred that applying the *ejusdem generis* rule alongside the literal rule in the interpretation of Article 74 (2) of the Constitution, would lead to the conclusion that the political party with the largest number of seats in the opposition was the only association entitled to elect or appoint the leader of the opposition, according to the drafters of the Constitution.

[2.16] Counsel proceeded to cite Article 266 of the Constitution on the definition of political party that: -

*Means an association whose objectives include the contesting of elections in order to form government or influence the policy of the national or local government.*

[2.17] He followed with the submission that the definition of political party envisaged an association of persons with the common goal of holding public offices such as the Presidency or in the National Assembly. Adding, that a political party, which failed to obtain the Presidential Office, but had the highest number of seats in the National Assembly, would be considered as the largest opposition political party. Hence, in interpreting the interplay between the class of persons, which Article 74 (2) of the Constitution envisaged, and the rights conferred on them; it could only be construed that the opposition political party with the largest number of seats in the National Assembly had the right to elect

the leader of the opposition. There was a requirement for the person to be an MP from an opposition party and not the ruling party.

[2.18] For the interpretation of Article 60 (2) (d) and (e) of the Constitution, the Court's attention was drawn to the case of *Benjamin Mwelwa v Attorney General and Another*<sup>4</sup> where it stated *inter alia* that:

*Political parties must exercise internal democracy in handling their affairs.*

[2.19] Expanding thereon, counsel posited that political parties were required to adhere to the Constitutional principles on democracy. Hence, the petitioner who was aggrieved by Hon. Mundubile's appointment acquired a constitutional duty and right to challenge it.

*1<sup>st</sup> respondent's case*

[3.1] The 1<sup>st</sup> respondent filed an answer accompanied by a supporting affidavit on 25<sup>th</sup> January, 2024, which was deposed to by Mrs. Cecilia Sikatele Mambwe – Deputy Clerk (Procedure), National Assembly of Zambia. The gist of the respondent's affidavit was that on 30<sup>th</sup> August, 2021 the former PF Party Secretary General, Mr. Davies Mwila, wrote a letter to the Clerk of the National Assembly, where he communicated that Hon. Brian Mundubile had been selected as leader of the opposition. That this was after a caucus meeting held between the PF Members of the Central Committee and MPs approving the selection.

[3.2] The 1<sup>st</sup> respondent denied that the Speaker contravened Article 74 (2) of the Constitution and Rule 43 of the National Assembly of Zambia Standing Orders 2021, because her only obligation under the latter provision, was to receive communication on the person elected as leader of opposition. Thus, she was not legally mandated to question the internal election processes within the PF Party.

[3.3] On behalf of the 1<sup>st</sup> respondent, learned counsel filed skeleton arguments dated 25<sup>th</sup> January, 2024 and counsel conceded that the election of leader of the opposition was done by the opposition party with the largest number of seats in the National Assembly. However, it was averred that the procedure for electing the leader of opposition was an internal matter for the political party and not the National Assembly. Hence, Article 74 (2) of the Constitution and Rule 43 of the National Assembly of Zambia Standing Orders, 2021 were inconsequential to the petitioner's case.

[3.4] Consequently, that the Speaker did not breach any law when she received communication about Hon. Mundubile's appointment from the PF Party. In that regard, he was entitled to draw the benefits of that office. In concluding, counsel urged us to dismiss the petition on the basis of the *Benjamin Mwelwa*<sup>4</sup> case, where we stated that:

*We hold the firm view that it is not sufficient to allege a breach of a statutory or constitutional provision without setting out the facts, in sufficient detail, which are the basis of the claim against the respondent and entitle the petitioner to the reliefs sought.*

*2<sup>nd</sup> respondent's case*

[4.1] The 2<sup>nd</sup> respondent did not contest the petition.

*3<sup>rd</sup> respondent's case*

[5.1] The 3<sup>rd</sup> respondent filed an answer on 28<sup>th</sup> February, 2024 which was supported by an opposing affidavit. The brief response was that all processes provided for in the law on his appointment as leader of the opposition in the National Assembly had been followed. In his affidavit, the 3<sup>rd</sup> respondent deposed and reiterated that he was validly appointed as leader of the opposition.

[5.2] On behalf of the 3<sup>rd</sup> respondent, learned counsel filed skeleton arguments on 15<sup>th</sup> March, 2024. He averred that Article 74 (2) of the Constitution and Rule 43 of the National Assembly of Zambia Standing Orders 2021 were complied with. This was done by formally communicating the name of the 3<sup>rd</sup> respondent as leader of opposition to the Speaker. Counsel added that the law did not prescribe the person who was supposed to communicate the decision to the Speaker. Ultimately, no law had been breached.

[5.3] Counsel next cited text from *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition, 2021, International Institute for Democracy and Electoral Assistance*, where the learned

authors, Balmer, Elliot, at pages 1 to 13 articulate on the position of leader of the opposition in Parliament that:

*Although usually associated with Westminster-model parliamentary systems, there are several Constitutions in the world today where a constitutionally recognized leader of the opposition exists alongside a directly elected executive president. These include the constitutions of Burkina Faso, Madagascar, Niger, Senegal, Seychelles, Sri Lanka, Uganda, Zambia and Zimbabwe....*

*Some presidential systems that recognize the leader of the opposition specify that the leader of the opposition is chosen by the largest party in the legislature other than the president's party (e.g Constitution of Zambia, Article 74 read in conjunction with Article 266).*

*Secondly, the leader of the opposition in a system with a directly elected Presidency is not automatically the obvious front-running opposition candidate at the next presidential election. It may be the leader of the opposition who runs against the president at the next election, but it need not be.*

**[5.4]** On that basis, counsel contended that the procedure of electing the leader of the opposition was purely an internal political party affair and not a constitutional matter. In that regard, that the 3<sup>rd</sup> respondent was validly elected to the position and that the petitioner had failed to prove his case. In concluding, counsel urged us to dismiss the petition with costs.

#### *Hearing*

**[6.1]** The matter came up for the hearing on 19<sup>th</sup> April, 2024. The parties who had initially intended to call witnesses dispensed with their presence and all chose to rely on their respective affidavits and skeleton arguments.

**[6.2]** In augmenting the petitioner's case, learned counsel Mr. Chipompela cited the case of *Christopher Shakafuswa and Another v Attorney*

*General and Another*<sup>5</sup> to demonstrate that the Court had been properly moved by way of petition in resolving the dispute.

[6.3] He submitted that the petition sought to clarify the process relating to the election of leader of the opposition under Article 74 (2) of the Constitution. Further, to show that Article 60 (2) (d) and (e) of the Constitution on intra-party democracy had been breached by the respondents. He reiterated that the 3<sup>rd</sup> respondent's appointment as leader of the opposition by the 2<sup>nd</sup> respondent contravened Article 74 (2) of the Constitution because he was not elected. Counsel also insisted that under Article 74 (2) of the Constitution, the Speaker had a duty to ensure that the leader of opposition was properly elected and not appointed.

[6.4] Placing reliance on the *Benjamin Mwelwa*<sup>4</sup> case, counsel submitted that, the PF Secretary General breached Article 74 (2) and Article 60 (2) (d) and (e) of the Constitution when he appointed Hon. Mundubile in the absence of an election. As a result, the other party members who had a right to participate in the elections could not engage in the process.

[6.5] On behalf of the 1<sup>st</sup> respondent, the learned Solicitor General, Mr. Muchende SC, drew the Court's attention to paragraph 8 of the petitioner's affidavit in support on the allegation that "*Hon. Mundubile's election was not formally conducted by the MPs from the opposition*". Next, he drew the Court's attention to paragraph 9 on the allegation that



*"no minutes evidencing that a meeting was convened and votes were cast in order to determine who would serve as leader of opposition"*. In reference to the allegations, the Solicitor General argued that the petitioner's position was legally flawed because Article 74 (2) of the Constitution did not arrogate any responsibility to the opposition MPs to elect the leader of opposition. Instead, that it was the duty of the opposition party with the largest number of seats in the National Assembly, which holds the power to elect a leader of opposition.

[6.6] Ms. Chisanga, the learned Principal State Advocate, added that the Speaker had no duty to elect, appoint or select the leader of the opposition. That the responsibility lay with the opposition party with the largest number of seats in the National Assembly. In concluding, counsel prayed to the Court to dismiss the petition.

[6.7] In augmenting the 3<sup>rd</sup> respondent's case, learned counsel, Mr. Chulu contended that Article 74 (2) of the Constitution did not define the word elect or how the process of electing a leader of the opposition should be conducted. Therefore, the form and manner of electing the leader of opposition was up to the largest opposition political party. He implored the Court to define the word elect in an ordinary grammatical sense because it simply meant, to choose a preferred person for a particular position.

[6.8] In reference to the letter written to the Speaker by the former PF Secretary General regarding the 3<sup>rd</sup> respondent's appointment, counsel stated that there was some form of meeting held within the PF Party structures, where a resolution was made to elect Hon. Mundubile as the leader of the opposition. Thus, there was no breach of Article 74 (2) of the Constitution and the petitioner's case had no merit. Counsel concluded with a prayer to Court to dismiss the petition with costs.

[6.9] In reply, Mr. Chipompela on the issue of costs referred the Court to the case of *John Sangwa v Attorney General*<sup>6</sup> on the principles of allocation of costs. He concluded his submissions by reiterating the petitioner's prayer.

*Consideration and decision*

[7.1] We now turn to our determination, having considered the petition, 1<sup>st</sup> and 3<sup>rd</sup> respondents' answers, the affidavit evidence and submissions of learned counsel in support of their respective cases. Our jurisdiction to adjudicate constitutional disputes is conferred by Article 128 (1) of the Constitution which provides that: -

*Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear*

- (a) A matter relating to the interpretation of this Constitution;*
- (b) A matter relating to a violation or contravention of this Constitution;*
- (c) A matter relating to the President, Vice President or an election of the President;*
- (d) Appeals relating to election of Members of Parliament and Councillors;*
- (e) Whether or not a matter falls within the jurisdiction of the Constitutional Court.*

[7.2] Article 128 (3) of the Constitution states: -

*Subject to Article 28, a person who alleges that –*

- (a) An act of Parliament or Statutory Instrument;*
- (b) An action measure or decision taken under any law; or*
- (c) An act, omission, measure or decision by a person or an authority;*

*contravenes this Constitution, may petition the Constitutional Court for redress.*

[7.3] In sum, the Court enjoys extensive jurisdiction over constitutional matters. The jurisdiction though is limited by Article 28, of the Constitution.

[7.4] There are three (3) issues which, we have been asked to determine herein, that is:

- (i) Whether the appointment of the 3<sup>rd</sup> respondent as leader of opposition is null and void ab initio because it was done in contravention of Article 74 (2) of the Constitution?*
- (ii) Whether the 2<sup>nd</sup> respondent in appointing the 3<sup>rd</sup> respondent as leader of opposition contravened the provisions of Article 60 (2) (d) (e) of the Constitution by not exercising internal democracy?*
- (iii) Whether the Speaker contravened Article 74 (2) of the Constitution and Rule 43 of the National Assembly of Zambia Standing Orders, 2021 by accepting the 3<sup>rd</sup> respondent's appointment as leader of opposition and consequently allowing him to draw the entitlements of that office?*

[7.5] These issues in our view, are all interwoven and for this reason, shall be dealt with at the same time.

[7.6] This petition is essentially inviting the Court to interpret Article 74 (2) of the Constitution. This means that the Court must explain the words and breathe life into that provision. In the case of *Steven Katuka*<sup>2</sup> we laid down the principles of our interpretative jurisdiction as follows: -

*In terms of the general and guiding principles of interpretation, the starting point in interpreting words or provisions of the Constitution or indeed any statute, is to first consider the literal and ordinary meaning of the words and articles that touch on the issue or provisions in contention. This is premised on the principle that words or provisions in the Constitution or statute must not be read in isolation. It is only when the ordinary meaning leads to absurdity that the purposive approach should be resorted to. The purposive approach entails adopting a construction or interpretation that promotes the general legislative process. This requires the Court to ascertain the meaning and purpose of the provision having regard to the context and historical origins, where necessary. This exercise would sometimes require reading into the provision what the legislature had intended.*

[7.7] Flowing therefrom, courts in interpreting statutes must start by taking the words used therein at face value and should apply the words as written. It is through this means, that courts can be able to ascertain the true meaning of enactment, or words used in statutes.

[7.8] Where, however, there is ambiguity in the natural meaning of the words used, the court may resort to the purposive rule of interpretation. This rule focuses on the purpose or intention behind a particular statute, by considering the overall objective and context in determining the most reasonable interpretation so as to avoid absurdity.

[7.9] Another important aspect established in constitutional interpretation, is the principle that constitutional provisions must not be read in isolation but together with all relevant provisions as a whole so as to give effect to the objective of the Constitution.

[7.10] Article 74 of the Constitution, which is under consideration provides that: -

- (1) The President shall appoint the Vice President to be the leader of Government business in the National Assembly.
- (2) The opposition political party with the largest number of seats in the National Assembly shall elect a leader of the opposition from amongst the Members of Parliament who are from the opposition. (Emphasis supplied)

[7.11] What we discern from the wording of the Article, is that the language used is plain, simple and unambiguous. Therefore, the fundamental rule of interpretation, that is the literal approach will be adopted in the elaboration of Article 74 of the Constitution. As far as we are concerned, there is no need to read anything into the words, because they do not bear a technical sense nor require an elaborative interpretative process.

[7.12] Having stated so, we find after reading Article 74(1) of the Constitution that it plainly arrogates the power to the President to appoint the Vice President as leader of Government business in the National Assembly. Put differently, only the Vice President can be appointed in that position by the President.

[7.13] As for the duty and authority prescribed under Article 74 (2) of the Constitution, we firstly find that it is only the opposition political party with the largest number of seats (or numerical strength) in the National Assembly that can elect the leader of the opposition. Secondly, for one to be elected as leader of opposition, such person must be a Member of Parliament from either the largest opposition party or other opposition party in the National Assembly.

[7.14] Consequently, independent Members of Parliament, cannot be elected as leader of the opposition because the constitutional definition of opposition does not encompass them. This position is expressed by Article 266 of the Constitution which provides that: - "*opposition*" means "*a political party which is not the political party in Government and does not include independent Members of Parliament*".

[7.15] We hasten to state that, the two (2) requirements embodied in Article 74 (2) of the Constitution are conjunctive. That is to say, they must both be satisfied in order to determine whether there has been compliance with the constitutional provision. Addressing the issue, whether the 3<sup>rd</sup> respondent's appointment was done in accordance with Article 74(2) of the Constitution, we find that it met the test provided therein and our answer is in the affirmative. The reasons we give are that the PF Party, which is the largest opposition party in the National Assembly elected Hon. Mundubile as the leader of the opposition. The manner in which,

the election was conducted is not prescribed by the Constitution but is purely an internal affair of the political party, and this may be by way of caucus, party polls or other processes that exist within the party's structure.

**[7.16]** We also wish to clear the misconception by the petitioner, that the selection process of leader of opposition is limited to the participation of opposition MPs. This is clearly not the case because it comprises the wider membership of the party and its structures. Given the circumstances, we opine that there is no basis upon which, the Court must inquire into the process of Hon. Mundubile's selection.

**[7.17]** Turning to the petitioner's allegation where he sought to portray that the other MPs in the PF party were excluded from electing the leader of opposition, we find that no evidence was presented by the petitioner to substantiate his allegation. Accordingly, the claim fails.

**[7.18]** It is also our finding that, the Speaker plays no role in the election/selection of the leader of opposition as this is purely an intra-party political affair. We reiterate that how the largest opposition political party in the National Assembly will arrive at its selection/decision is purely within its authority and control.

**[7.19]** According to Rule 43 of the National Assembly of Zambia Standing Orders, 2021, the Speaker's only responsibility is to receive, in writing,

the name of the person who has been elected as leader of opposition.

Rule 43 reiterates Article 74 (2), on electing the leader of the opposition as follows: -

*In accordance with Article 74 (2) of the Constitution, the opposition party with the largest number of seats in the House shall elect a leader of the opposition from amongst members of the opposition in the House*

*The party shall, upon electing a leader of the opposition under paragraph (1), communicate the decision, in writing, to the Speaker.*

[7.20] We therefore find no substance in the petitioner's argument that the Speaker was expected to inquire into the election of leader of the opposition in so far as the tally of votes cast or outcome was concerned, or to request for the minutes of the election from the PF Party.

[7.21] In conclusion, we hold that the petition has no merit and it is hereby dismissed.

*Final Order*

[8.1] We order the parties to bear their own costs.



M.M MUNALULA (JSD)  
PRESIDENT, CONSTITUTIONAL COURT

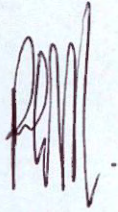


A.M SHILIMI  
DEPUTY PRESIDENT  
CONSTITUTIONAL COURT



A.M SITALI  
CONSTITUTIONAL COURT JUDGE

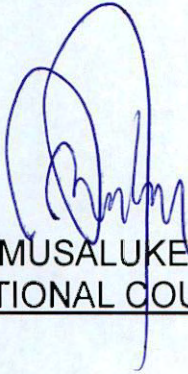




P. MULONDA  
CONSTITUTIONAL COURT JUDGE



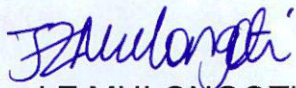
M.S MULENGA  
CONSTITUTIONAL COURT JUDGE



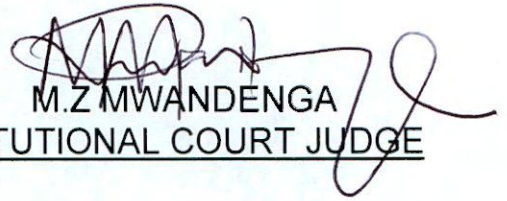
M. MUSALUKE  
CONSTITUTIONAL COURT JUDGE



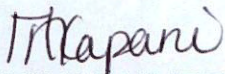
M.K CHISUNKA  
CONSTITUTIONAL COURT JUDGE



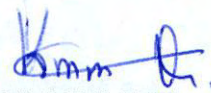
J.Z MULONGOTI  
CONSTITUTIONAL COURT JUDGE



M.Z MWANDENGA  
CONSTITUTIONAL COURT JUDGE



M.M KAWIMBE  
CONSTITUTIONAL COURT JUDGE



K. MULIFE  
CONSTITUTIONAL COURT JUDGE