

FOR YOUR SIGNATURE PLEASE

Munalula, PC ✓ 14/06/2024

Shilimi, DPC ✓ 13/06/24

Sitali, JC ✓ 19.06.24

Mulonda, JC ✓ 19.06.2024

Mulenga, JC ✓ 19/06/2024

Musaluke, JC ✓ 19/06/2024

Chisunka, JC ✓ 19/06/2024

Mulongoti, JC ✓ 20/6/2024

Mwandenga, JC ✓ 20/6/2024

Kawimbe, JC ✓ 19/06/2024

Mulife, JC ✓ 14/06/2024

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

2023/CCZ/0028

IN THE MATTER OF: ARTICLE 1 (2) AND (3) AS READ TOGETHER WITH ARTICLE 1 (5) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016. THE JURISDICTION OF THE CONSTITUTIONAL COURT.

IN THE MATTER OF: ARTICLES 128 THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

IN THE MATTER OF: ALLEGED VIOLATION AND/OR THE CONTRAVENTION OF THE CONSTITUTION OF ZAMBIA.

IN THE MATTER OF: ARTICLE 60 (2) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

IN THE MATTER OF: ARTICLES 52, AND 74 (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) OF THE PATRIOTIC FRONT PARTY CONSTITUTION.

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE 60 (2) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016, AND ARTICLES 52, AND 74 (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) OF THE PATRIOTIC FRONT PARTY CONSTITUTION.

BETWEEN

RONALD KAOMA CHITOTELA
NICKSON CHILANGWA
MUSONDA MPANKATA
CHRISTOPHER KANG'OMBE
REMEMBER MUTALE
BRIAN MUNDUBILE
STEPHEN KAMPYONGO
MULENGA FUBE
MUTOTWE KAFWAYA

1ST PETITIONER
2ND PETITIONER
3RD PETITIONER
4TH PETITIONER
5TH PETITIONER
6TH PETITIONER
7TH PETITIONER
8TH PETITIONER
9TH PETITIONER



AND

MILES BWALYA SAMPA
MORGAN NG'ONA
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

Coram: Munalula, PC, Shilimi, DPC, Sitali, Mulonda, Mulenga, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe, and Mulife JJC on 18th April, 2024 and 27th June, 2024

For the Petitioners: Mr. J. Zimba of Messrs Makebi Zulu Advocates and Mr. B. Mwelwa of Messrs Mwelwa Phiri & Partners

For the 1st and 2nd Respondents Mrs. S. Kalima Banda and Ms. S. Mvula of J & M Advocates and Mr. S. Chipompela of Joseph Chirwa & Company.

For the 3rd Respondent: Mrs. K. N. Mundia, Deputy Chief State Advocate, Mrs. C. L. Kasonde – Mwanza, Principal State Advocate and Ms. N. Chongo, Principal State Advocate.

RULING

Shilimi - DPC, delivered the ruling of the Court

Cases Referred to:

1. Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia 2018/CCZ/005
2. Sean Tembo v Attorney General 2023/CCZ/0014
3. Development Bank of Zambia and KPMG Peat Marwick v Sunvest Limited and Sun Pharmaceuticals Limited (1995/97) Z.R. 187
4. BP Zambia Plc v Interland Motors Limited, Supreme Court Judgment No. 5 of 2001.
5. Chick Masters Limited and Another v Investrust Bank Plc SCZ Appeal No. 74 of 2014
6. Muhammad Khalid v The Attorney General (1982) Z.R. 49
7. Bernard Macdonald Christopher and Roosevelt Skerit v The Attorney General of Dominica 2010/0287
8. Gervas Chansa v Attorney General 2019/CCZ/004
9. Benjamin Mwelwa v The Attorney General and Others 2020/CCZ/007
10. GTB v Toyed (Nig) Limited and Another (2016) JELR 34533 (CA)

Legislation Referred to:

1. The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Constitutional Court Act No. 8 of 2016
3. The Constitutional Court Rules, S.I. No. 37 of 2016
4. The Rules of the Supreme Court of England, 1965 (1999 Edition)

1.0 Introduction

[1.1] This is a Ruling on an application by the 1st and 2nd Respondent to raise preliminary issues on a point of law pursuant to Order 14A Rules 1 and 2, Order 33 Rule 3 and 7 and Order 18 Rule 19 of the Rules of the Supreme Court of England (1999) Edition, as read together with Article 128 of the Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution), Section 3 (2) of the Constitutional Court Act No. 8 of 2016 (the Act) and Order 1 of the Constitutional Court Rules Statutory Instrument No. 37 of 2016 (the CCR).

2.0 Background

[2.1] The background to this application is that the Petitioners commenced an action by way of Petition on 8th December, 2023 against the Respondents alleging breach of Article 60(2) of the Constitution and several articles of the Patriotic Front party constitution (party

constitution). The relevant facts, as per the Petition and the Affidavit verifying facts sworn by the 1st Petitioner are as summarised below:

[2.2] That the Petitioners are members of the Patriotic Front (the party) and members of Parliament for various constituencies in the Republic of Zambia. It is averred that the 1st Respondent is an expelled member of the party and Member of Parliament for Matero Parliamentary Constituency. It is further averred that the 2nd Respondent has been masquerading as Secretary General of the party, purportedly appointed by the 1st Respondent.

[2.3] That before an aspiring presidential candidate of the party can take part in any election, he or she ought to be approved by the party's Central Committee in accordance with party constitution. Further that the organ of the party endowed with powers to elect the party president after the said approval by the Central Committee is the General Conference comprised of members of the National Council and up to 600 delegates from each of the ten provinces.

[2.4] That the Central Committee has not approved any person to take part in the party Presidential elections since the last General Conference meeting which took place prior to the National General elections of 12th

August, 2021. Further that the General Conference did not meet to hold elections to elect a new party president on the 24th October, 2023.

[2.5] That on or about 15th September, 2023 the 1st Respondent did, together with his supporters, storm the party Secretariat in Lusaka to take control of the same and caused damage to the party property. Following these events the 1st Respondent was suspended from the party pending a disciplinary hearing.

[2.6] That while serving the said suspension, the 1st Respondent on 24th October, 2023 held a purported Extra Ordinary General Conference where he was purportedly elected as the president of the party. Following these events, the party Secretary General, Raphael M. Nakacinda filed an action in the High Court under cause number 2023/HP/1866 challenging the legality of these events. The matter is pending determination.

[2.7] That on 24th October, 2023, the 1st Respondent was expelled from the party for having committed gross misconduct by the party Vice President, Given Lubinda which expulsion he has never challenged. Further, that before his said expulsion from the party, he was suspended for misconduct and in his quest to secure his interests, he commenced an action under Cause Number 2023/HP/0225 and obtained an

injunction restraining Given Lubinda and Nickson Chilangwa from suspending, expelling or taking any action adverse to him in their capacities as Acting president and Acting Secretary General of the party, respectively.

[2.8] That the 1st Respondent purportedly using powers as party president appointed the 2nd Respondent as Secretary General of the party. Further, that following the purported election of the 1st Respondent as party president and appointment of the 2nd Respondent as Secretary General of the party, they began to disrupt the functions of the party by writing several letters claiming that positions of the party in the National Assembly had been given to new members of the party.

[2.9] That following events in the preceding paragraphs, the Petitioners learnt through social media that the 2nd Respondent using his purported powers as Secretary General of the party had issued letters addressed to the petitioners claiming to expel them from the party and had also written a letter to the Honourable Speaker of the National Assembly dated 6th December, 2023. Further that they had never received any disciplinary letters charging them with any offence and neither had they received the purported letters of expulsion from the 2nd Respondent.

[2.10] Finally, that the failure to follow laid down procedure as regards election of a party president, the purported appointment of the Secretary General of the party by such purported president, and the actions of such purported Secretary General of supposedly expelling members of the party violates the Constitution.

3.0 Based on these facts, the Petitioners sought the following relief;

- (a) *A declaration that the purported Extra-Ordinary convention held on the 24th October, 2023 at the New Mulungushi International Conference Centre at the Kenneth Kaunda wing was illegal and therefore, null and void ab initio as it was in violation of Article 60 (2) of the Constitution;*
- (b) *A declaration that the purported election of the 1st Respondent arising from the purported Extra-Ordinary Convention held on the 24th October, 2023 at the New Mulungushi International Conference Centre at the Kenneth Kaunda wing was illegal, and therefore null and void ab initio as the purported election was and is in violation of Article 60 (2) of the Constitution;*
- (c) *A declaration that the purported appointment of 2nd Respondent as the purported Secretary General of the Party by the 1st Respondent was and is illegal and therefore, null and void ab initio as the purported appointing authority did not have the requisite authority to appoint anyone as the 1st Respondent's purported election was and is in violation of Article 60 (2) of the Constitution.*
- (d) *A declaration that the 2nd Respondent being purportedly appointed by the 1st Respondent has no requisite authority to expel the Petitioners and or any other member of the party.*
- (e) *A declaration that the purported actions of the 3rd Respondent to act on the letters sent to her by the 2nd Respondent purporting to be the Secretary General of the Party was and is illegal and therefore, null and void ab initio as such actions were and are in violation of Article 60 (2) of the Constitution;*

- (f) *An interim order allowing the Petitioners, and the Party to operate freely, and the 1st and 2nd Respondents not to continue carrying themselves out as Party President and Secretary General respectively;*
- (g) *Costs; and*
- (h) *Any other relief the court may deem fit.*

4.0 Notice of Motion to raise Preliminary Issues on Points of Law

4.1 On 27th December, 2023, the 1st and 2nd Respondents filed this application for an Order to determine the matter on points of law. They presented eight issues for determination couched in the following terms:

- (i) *The Petition in relief (a) (b) (c) (d) in so far as it seeks this Court to hear and determine alleged violation of the Constitution of the Party is incompetently before this Court;*
- (ii) *The Petition in relief (e) is instituting backdoor judicial review of the decision of the Registrar of Societies, which issue is already subject to High Court proceedings under cause 2023/HB/77;*
- (iii) *The Petition in relief (f) seeks an injunction which has already been denied by the High Court in cause number 2023/HP/1866 and 2023/HP/1899*
- (iv) *The Petition is incompetent in so far as it invites this Court to deal with matters of the Convention at which the 1st Respondent was elected as President of the Patriotic Front Party and at which the 2nd Respondent was appointed as Secretary General, which said issues are already subject to proceedings before the High Court under cause number 2023/HP/1866 and 2023/HB/77 and as such the said matters cannot be heard before this court as they deal with private rights of individuals in a Political Party which is akin to a club;*

- (v) *The Petition does not show how Article 60 (2) of the Constitution has been violated and the said article is merely quoted in a blanket manner to make this matter look like a Constitutional issue when in fact it involves the private rights of individuals in a political party, which is the purview of the High Court and not the Constitutional Court;*
- (vi) *The Petition is a disguised attempt at forum shopping and is therefore an abuse of the Court process as it seeks to circumvent the process currently in the High Court, under cause numbers 2023/HP/0225, 2023/HP/1866, 2023/HP/1899 and 2023/HB/77*
- (vii) *The Petitioners are seeking to increase the chances of success by litigating the same issues before different courts;*
- (viii) *The Petition is so far as it offends the law and rules of court as tabulated above is incompetently before this court, constitutes forum shopping, a multiplicity of actions and therefore an abuse of the court process and the offending Petition should at this stage be struck out and dismissed with costs.*

6.0 1st and 2nd Respondents Affidavit evidence in support of the application.

[6.1] The 1st and 2nd Respondents' application was supported by an affidavit in support sworn by the 2nd Respondent who described himself as the Secretary General of the party.

[6.2] The essence of the affidavit evidence was to the effect that the Petitioners are asking this Court to pronounce itself on matters relating to the interpretation and the alleged violation of the party constitution when it has no jurisdiction. That Article 60 (2) of the Constitution has not

been violated and the said Article is merely quoted in a blanket manner to make this matter look like a constitutional issue.

[6.3] Further, that the issues sought to be determined by this Court by the Petitioners are already before the High Court in cause numbers 2023/HP/1866, 2023/HP/1899, 2023/HP/0225 and 2023/HB/77 and pending determination. That the Petition before this Court is incompetent and clearly a case of forum shopping, and an abuse of court process.

7.0 1st and 2nd Respondents' arguments in support of the application

[7.1] The 1st and 2nd Respondents filed skeleton arguments in support of the application on 27th December, 2023, to the effect that this matter is improperly and incompetently before this Court and that the same be dismissed for both lack of jurisdiction and abuse of the Court process through forum shopping.

[7.2] They in particular argued that pursuant to Order 14A of the White Book, this Court has the authority and jurisdiction to determine preliminary issues on points of law. Further, that any matter that does not fall within the scope of Article 128 of the Constitution cannot be entertained by this Court.

[7.3] They also submitted that, the jurisdiction of this Court is to hear matters relating to interpretation, violation or contravention of the Constitution. That the jurisdiction of the Court does not extend to the interpretation of political party constitutions and violation or contravention of such private rights of individuals. They in support of their submission relied on the decisions of this court in the cases of *Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia*¹ and *Sean Tembo v Attorney General*².

[7.4] They further submitted that the Petitioners are on a voyage of forum shopping which amounts to abuse of court process, noting that there are four matters before the High Court arising out of the same facts and subject matter. This, they submitted, constitutes a multiplicity of actions which courts have frowned upon. The cases of *Development Bank of Zambia and KPMG Peat Marwick v Sunvest Limited and Sun Pharmaceuticals Limited*³, *BP Zambia Plc v Interland Motors Limited*⁴ and *Chick Masters Limited and Another v Investrust Bank Plc*⁵, were cited in support of their submission.

8.0 1st and 2nd Respondents' oral arguments

[8.1] At the hearing, Counsel for the 1st and 2nd Respondents submitted that the crux of the motion is that the Petition is improperly before this Court on

account of the fact that it seeks to have the Court deal with issues pertaining to the contravention of the party constitution, and not the Republican Constitution. It was also submitted that the question the Petitioners have brought before this court, is to enquire into the legality and illegality of the convention convened by the 1st and 2nd Respondents of 24th October, 2023.

[8.2] It was further submitted that the party has a constitution that embodies the spirit of Article 60(2) of the Constitution and there is evidently no breach of Article 60(2). What is alleged is a breach of the party constitution. Further, that Article 60(2) of the Constitution does give guidance that political parties ought to hold elections but it does not prescribe rules under which these elections ought to be held. This is the preserve of the members of the said political party, who, if aggrieved, may challenge those rules and regulations before the appropriate Court but not before this Court. It was further submitted that the Petitioners had failed to show the nature of the alleged violation of the Constitution and had merely cited Article 60(2) of the Constitution in a blanket manner so as to give the court the impression that there are constitutional issues to be determined when there are not.

[8.3] Finally, it was submitted that the Petition as it is before this Court, is an attempt at forum shopping and abuse of court process as the matters that have been placed before this court by the Petitioners were all placed before other courts prior to the commencement of this matter.

9.0 Petitioners' Affidavit evidence in opposition to the application.

[9.1] In opposing the application, the Petitioners filed an affidavit in opposition and skeleton arguments. The affidavit was sworn by the 1st Petitioner who averred that the Petitioners were not seeking that this Court interpret the party constitution, but the Republic Constitution. He further averred that all political party constitutions in Zambia are subject to the Constitution and required to promote national values and principles, democracy and constitutionalism. That they are further required to promote and practice democracy through regular, free and fair elections within the political parties and that this Court has jurisdiction over any political business such as an election that is conducted contrary to the party constitution.

[9.2] That, despite the fact that the party is a private club, by it being a political party, it is amenable to the Constitution in the conduct of its business.

[9.3] That the Petitioners were purportedly expelled without any charge by the letters dated 6th December, 2023; and

[9.4] That there is no other matter in any Court touching on the matter before this Court, but that the number of cases pending in other Courts is due to the conduct of the Respondents for which the Petitioners are seeking the intervention of this Court to maintain the status quo of the party and its members. Further, that there was therefore no multiplicity of actions.

10.0 Petitioners' arguments in opposition to the application.

[10.1] In their written skeleton arguments, the Petitioners submitted that they were not, in their Petition seeking that this Court hears and determines the alleged violation of the party constitution. That their allegation was that the conduct of the Respondents was in breach of Article 60(2) of the Constitution.

[10.2] It was the Petitioners' further submission that the political parties constitutions are creatures of the Constitution. That therefore, all political parties ought to conduct their political activities and more particularly elections within the dictates of the Constitution, failure to which this Court has the constitutional jurisdiction to declare such activities unconstitutional.

[10.3] It was finally submitted that there are no issues to be determined on points of law as all the issues raised by the 1st and 2nd Respondents can be raised in their Answer to the Petition.

11.0 Petitioners' oral arguments

[11.1] In augmenting the written arguments, counsel for the Petitioners submitted that political parties are creatures of the Constitution and that this is demonstrated by the provisions of Article 60(1) and (2). That their being creatures of the Constitution, means that the obligations placed on them fall squarely under the jurisdiction of this Court and that Article 128 (1) (a) – (e) of the Constitution is indicative of that point.

[11.2] It was submitted that the case of *Sean Tembo v The Attorney General*² is distinguishable from the present case in the sense that, it highlights the question of threshold for success and that at this stage of proceedings, the Court is not yet dealing with that aspect. The Petition reveals that there is a cause of action suitable for determination before the Constitutional Court. That there is a factual situation upon which this Court is invited to pronounce itself.

[11.3] It was further argued that this being a Petition, evidence must be led. That there are particular allegations that have been made in the Petition and that one of them is that the holding of the meeting of 24th October, 2023 was not in accordance with Article 60(2) of the Constitution, and particularly Article 60(2) (d) which deals with political party elections. Evidence to prove that allegation will come by way of testimony. Further,

that whether there was a holding of this meeting or not and the manner of holding the meeting is a question of fact to be proved by evidence. Reference was made to the case of *Muhammad Khalid v The Attorney General*⁶ with regard to the rules relating to a Petition.

[11.4] It was also argued that one of the main issues relates to the purported expulsion of a Member of Parliament from the National Assembly by one who claims to have such authority, when, in fact not and that this is a constitutional issue.

[11.5] With regard to the allegation of a multiplicity of actions, it was submitted that two matters in the High Court no longer exist.

[12.0] **1st and 2nd Respondents' reply**

[12.1] In reply to the Petitioners' oral arguments in opposition, Counsel for the 1st and 2nd Respondents submitted that although this Court has a role to play in the protection of democracy, that role does not give this Court power to go outside the jurisdiction conferred on it by Article 128 of the Constitution.

[12.2] It was argued that the challenge of the 1st Respondent's authority by the Petitioners, is based on the allegation that there is a breach of the party constitution and this Court will be going outside its jurisdiction in making a determination on such an allegation.

[12.3] With regard to the issue of forum shopping, it was submitted that the act of discontinuance of the two matters under cause number 2023/HP/1866 and 2023/HP/1899 shows that there was forum shopping.

13.0 Issues for determination

[13.1] The main issue for determination as we see it is whether the Petition discloses any constitutional issue for determination by this Court.

14.0 Consideration and Decision

[14.1] We have carefully considered the preliminary issues raised in the notice of motion before us together with the Affidavits, the written skeleton arguments filed by the Parties and the oral arguments made by Counsel.

[14.2] For convenience we will first consider the preliminary issue raised at paragraph 4(v) which reads as follows:

The Petition does not show how Article 60(2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 has been violated and the said Article is merely quoted in a blanket manner to make this matter look like a Constitutional issue when in fact it involves the private rights of individuals in a political party, which is the purview of the High Court and not the Constitutional Court.

[14.3] The issue raised in 4(v) of the application goes to the jurisdiction of this Court. The 1st and 2nd Respondents in their application contend that the Petition does not disclose how Article 60(2) of the Constitution has been violated. Further, that it does not disclose any Constitutional issue for determination by this Court and therefore that the Court has no jurisdiction to entertain the Petition in its current form.

[14.4] Article 128(1) of the Constitution sets out the jurisdiction of this Court and provides as follows:

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; and*
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.*

[14.5] Article 128(3) further provides as follows:

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.

[14.6] Arising from the above provisions it is clear that this Court enjoys exclusive jurisdiction over constitutional matters subject to Article 28 of the Constitution.

[14.7] Article 60(2) of the Constitution upon which the Petition is anchored provides that:

Article 60(2) A Political Party shall-

- (a) promote the values and principles specified in this Constitution;*
- (b) have a national character;*
- (c) promote and uphold national unity;*
- (d) provide and practice democracy through regular, free and fair elections within the party;*
- (e) respect the right of its members to participate in the affairs of the Political Party;*
- (f) respect the right of its members to seek redress from a Court or tribunal when aggrieved by a decision of the Political Party; and*
- (g) subscribe to and observe the code of conduct for political parties, as prescribed.*

[14.8] The gravamen of the Petition is that the party meeting or convention of 24th October, 2023 violated the above stated provisions of Article 60(2) of the Constitution and Articles 52 and 74 (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) and (77) of the party constitution. The Petition goes into details of the election processes and procedures and how the convention or meeting of 24th October, 2023 violated these processes as enshrined in the party constitution. It however does not show how Article 60(2) was violated if at all.

[14.9] In the case of *Sean Tembo v The Attorney General*², this Court was referred to the persuasive decision of the Caribbean Supreme Court in the matter of *Bernard Macdonald Christopher and Roosevelt Skerit v The Attorney General of Dominica*⁷ on the threshold that was set for the Petitioner to succeed in an action alleging contravention of the Constitution and in which the Supreme Court guided that:

a claimant who seeks to claim breach of the Constitutional provisions should show on the face of the pleadings the nature of the alleged violation or contravention that is being ascertained.

[14.10] The Petitioners have alleged violation of Article 60(2) in a blanket manner without showing on the face of the Petition the nature of the alleged violation or contravention that is being alleged. On the other hand, the Petition goes into details as to how the party constitution was violated. The issues in contention all revolve around the alleged violation of the party constitution in the holding of the convention or meeting of 24th October, 2023.

[14.11] The jurisdiction of this Court though wide is still limited by the Constitution itself and the enabling statute and is limited to Constitutional matters as specified in Article 128. Its jurisdiction does not extend to the interpretation or violation of political party constitutions.

[14.12] In the case of *Gervas Chansa v Attorney General*⁸ with regard to what amounts to a constitutional matter, we held at page J33 that:

Our short answer to the Petitioners claim, in it's essence, is that it is not a constitutional matter so as to be determined by this Court. We say so because of our specific jurisdiction as a Court. We are confined to determining constitutional questions. A constitutional question is defined in Black's Law Dictionary as a legal issue resolvable by the interpretation of the Constitution rather than a statute.

[14.13] It is clear to us that in terms of Article 128 of the Constitution and on the authority of our decisions in the cases of *Sean Tembo v The Attorney General*², and *Gervas Chansa v Attorney General*⁷ the Petition does not raise any constitutional issues. The petition is improperly before us.

[14.14] In the case of *Benjamin Mwelwa v The Attorney General and Other*⁹, this Court noted that:

jurisdiction is what provides the authority for a Court to hear and determine matters that come before it in the manner prescribed by law.

[14.15] The Court went on to further quote the decision of the case of *GTB v Toyed (Nig) Limited and Another*¹⁰ in which the Nigerian Court of Appeal stated that:

The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any Court tries or hears a case. It is, metaphorically speaking, the life blood of all trials, and without

which all such trials and hearings are a nullity notwithstanding how well or meticulous such a trial or proceeding had been conducted or how sound or profound the resultant Judgment. It simply is a nullity.

[14.16] On the basis of the above authority of Benjamin Mwelwa⁹ and in the absence of jurisdiction, if the Court was to proceed to hear and determine this matter, the resultant judgment would simply be a nullity.

[14.17] In view of our finding that the Court has no jurisdiction to determine the Petition as it does not disclose any constitutional issue, it follows that the rest of the issues raised have been rendered otiose.

15.0 Orders

[15.1] We accordingly make the following orders:

[15.2] The 1st and 2nd Respondents' application to dismiss the Petition for want of jurisdiction is upheld.

[15.3] The Petition herein is hereby dismissed

[15.4] Each party to bear their own costs.



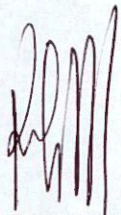
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M. M. MUNALULA (JSD)
PRESIDENT – CONSTITUTIONAL COURT



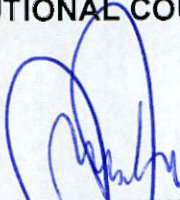
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A. M. SHILIMI.
DEPUTY PRESIDENT
CONSTITUTIONAL COURT



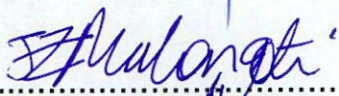
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A. M. SITALI.
CONSTITUTIONAL COURT JUDGE



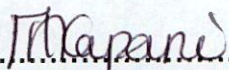
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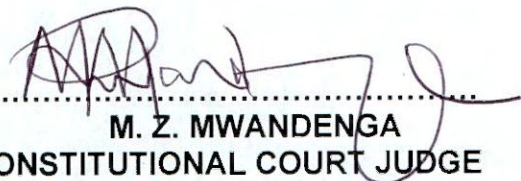
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CONSTITUTIONAL COURT JUDGE



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K. MULIFE
CONSTITUTIONAL COURT JUDGE