

FOR YOUR SIGNATURE

MULENGA, JC: ✓ 26/06/2024

MUSALUKE, JC: ✓ 26/06/2024

MWANDENGA, JC: ✓ 26/06/2024

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

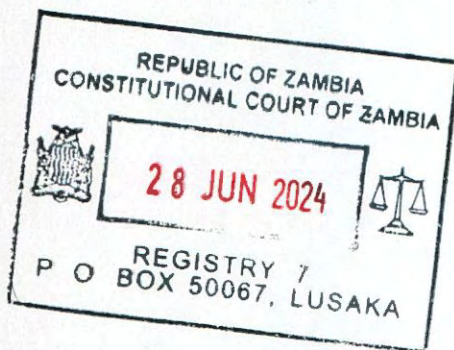
2023/CCZ/0023

IN THE MATTER OF:

THE ALLEGED CONTRAVENTION OF ARTICLES 8(c) AND (d), 193(1) and (2), 173(1) (a) (c) (e) and (g) and 2 (b), 235, 266 and 267 (1) (a)

IN THE MATTER OF:

THE ALLEGED UNCONSTITUTIONALITY AND ILLEGALITY OF THE DECISION BY THE RESPONDENTS TO PURPORT INVESTIGATE AND PUNISH THE PETITIONER WITHOUT DUE PROCESS BY WAY OF A HEARING OR TRIAL BY OR BEFORE A COURT OR TRIBUNAL OF COMPETENT JURISDICTION AS BY LAW ESTABLISHED AND REQUIRED



IN THE MATTER OF:

THE ALLEGED UNCONSTITUTIONALITY OF THE DECISION OF THE RESPONDENTS IN SELECTIVELY APPLYING THE ZIALE EXAMINATION MANAGEMENT POLICY IN A MANNER THAT DISCRIMINATED AGAINST THE PETITIONER IN RELATION TO OTHER FORMER STUDENTS OF ZIALE SIMILARLY CIRCUMSTANCED AS HIMSELF

IN THE MATTER OF:

THE ALLEGED UNCONSTITUTIONALITY AND ILLEGALITY OF THE DECISION BY THE RESPONDENTS, IN CONJUNCTION AND/OR COLLUSION WITH THE ZAMBIA AIR FORCE TO CURTAIL AND FRUSTRATE THE PETITIONER'S LEGAL CAREER BY HOLDING ON TO HIS LEGAL PRACTITIONERS QUALIFYING EXAMINATION RESULTS

BETWEEN:

ELIJAH SIMBAI

PETITIONER

V

THE ZAMBIA INSTITUTE OF ADVANCE

1ST RESPONDENT

LEGAL EDUCATION COUNCIL

LEAH. N. NGULUBE (AS ACTING DIRECTOR

2ND RESPONDENT

OF ZIALE)

ANN MALATA – ONONUJU (AS FORMER

3RD RESPONDENT

DIRECTOR OF ZIALE)

For the Petitioner:

In-person

For the Respondent:

Mr. J. Chileshe and Ms. C. Simbeye of Eric Silwamba, Jalasi and Linyama Legal Practitioners.

Coram: Mulenga, Musaluke and Mwandenga JJC. On 5th February, 2024 and 28th June, 2024

JUDGMENT

Musaluke, JC delivered the Judgment of the Court.

Cases referred to:

1. Joseph Malanji v Charles Abel Mulenga and the Electoral Commission of Zambia 2021/CCZ/A0021
2. Joseph Constantine Steamship Line Ltd v Imperial Smelting Corporation Limited (1941) 2 All ER 165
3. Khalid Mohammed v The Attorney General (1982) Z.R. 49
4. Akashambatwa Mbikusita Lewanika, Hichuunga Evaristo Kambaila, Dean Namulya Mungomba, Sebastian Saizi Zulu and Jennifer Mwaba v Fredrick Jacob Titus Chiluba (1998) Z.R. 79
5. Godfrey Malembeka v The Attorney General CCZ Selected Judgment No. 34 of 2017
6. Lloyd Chembo v The Attorney General CCZ Selected Judgment No. 15 of 2018

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 Zambia Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia
4. The Constitutional Court Rules, Statutory Instrument No. 37 of 2016
5. The Zambia Institute of Advanced Legal Education Student Rules, Statutory Instrument No. 49 of 2021

Other works cited:

1. Rules of the Supreme Court of England, 1965 (White Book) RSC, 1999 Edition.

1.0 Introduction

- 1.1 The Petitioner herein makes allegations of constitutional breaches regarding the decision by the Respondents to investigate and punish him without due process; the alleged decision by the Respondents to selectively apply the Zambia Institute of Advanced Legal Education Examination Policy in a manner that discriminated against him in relation to other former students of the Zambia Institute of Advanced Legal Education (ZIALE) similarly circumstanced and he also challenges constitutional breach by the decision of the Respondents to allegedly collude with the Zambia Air Force (ZAF) to curtail and frustrate the Petitioner's legal career by holding on to his legal

practitioners qualifying examination results. As a result of these acts by the Respondents, the Petitioner alleges specific breach of Articles 8 (c) and (d), 119(2), 122(2), 173(1) (c) and (e), 235 and 266 of the Constitution as amended by the Constitution of Zambia (Amendment) Act No.2 of 2016 (the Constitution) by the Respondents.

1.2 Petitioner's case

- 1.3 The background facts to this matter are that, the Petitioner was a student at ZIALE (the 1st Respondent) an institution established under an Act of Parliament with the mandate to conduct legal practitioners qualifying examinations and to offer national, regional and international training in post graduate legal studies and legislative drafting.
- 1.4 The Petitioner alleges that in 2021, he cleared his legal practitioners qualifying examinations conducted by the 1st Respondent. These legal practitioners qualifying examinations once passed enable a candidate to be called to the Zambian Bar and admitted to practice as an advocate. That he was however, informed that he would not be called to the Bar as he did not have a degree certificate, unless he made a formal request in writing to the Director of ZIALE. At that time the person that occupied the position of Director, was the 3rd Respondent.

- 1.5 That the Petitioner acted on the advice given and wrote to the 3rd Respondent's office, however, the 3rd Respondent informed the Petitioner that his request to be called to the Bar had been declined.
- 1.6 That when the Petitioner enquired as to why the case was different with him when the majority of his intake mates at ZIALE, in particular those who graduated from the University of Zambia (UNZA) and had been called to the Bar on the basis of the transcript of results certified by the Zambia Qualifications Authority (ZAQA) in the absence of a degree certificates, the 3rd Respondent responded that its policy required that for one to be recommended for admission to the Bar, he needed to produce a degree certificate.
- 1.7 That a few months later, when the Petitioner produced the degree certificate, the 3rd Respondent wrote to the Petitioner informing him that he would still not be called to the Bar as he had been removed from the list of students to be so called, on account that ZAF who at the material time was the Petitioner's employer had complained that he had forged his ZIALE results in 2019 and the 3rd Respondent therefore, needed to investigate the allegations that were brought against him.
- 1.8 That the Petitioner wrote to the 3rd Respondent informing her that the matter surrounding his relationship with ZAF was in court and the

allegations of forgery were an afterthought and fabrications that ZAF used in an attempt to proffer a defense against judicial review proceedings the Petitioner had commenced against it in the High Court. Further, the Petitioner explained that the real reasons behind the fierce conflict between the Petitioner and ZAF, had nothing to do with the results at ZIALE.

- 1.9 That in spite of the aforesaid explanation, the 3rd Respondent ignored the Petitioner's request to be heard on those allegations of forgery, or for her to refer the matter to State Police for investigations.
- 1.10 That on 5th September, 2023 the 2nd Respondent who took over as Director) wrote a letter to the Petitioner informing him of a disciplinary hearing that had been scheduled for 20th October, 2023. Before the said hearing could take place, the 2nd Respondent on 12th October, 2023 again wrote to the Petitioner informing him that the disciplinary hearing had been postponed indefinitely.
- 1.11 That the Petitioner believes that the reason for the protraction of the disciplinary hearing and the indefinite postponement is to defeat the interest of justice and keep the Petitioner from the practice of law in this jurisdiction.

1.12 The Petitioner further believes that the conduct of the Respondents has been marred with and informed by malice, a lack of institutional integrity, discrimination and unconstitutionality. Further, that the indefinite postponement of the disciplinary hearing, offends Article 173(1) (c) and (e) of the Constitution.

1.13 That the decision by the Respondents to what he termed: '*extra – judicially*' punish him in spite of knowing that the facts surrounding the ZAF's allegations are subject of litigation in the High Court under cause number 2022/HP/0692 is tantamount to interfering with and preempting a court process and offends Articles 119(2) and 122(2) of the Constitution.

1.14 The Petitioner therefore, alleges discrimination, illegality and unconstitutionality on the part of the Respondents as follows:

- i. The decision by the Respondents to investigate the Petitioner themselves for alleged forgery of his 2019 ZIALE results instead of referring the matter to the State Police for investigations is ultra vires Articles 8 and 235 of the Constitution;
- ii. The decision by the 3rd Respondent to remove the Petitioner from the list of those called to the Bar without being heard in his defence offends the principles of constitutionalism, in particular

the doctrine of natural justice as established and guaranteed under Article 8(c) of the Constitution, and is also *ultra -vires* Rule 30(2) of the ZIALE Student Rules, Statutory Instrument No. 49 of 2021 (ZIALE Student Rules);

- iii. The decision by the Respondents to refuse to call the Petitioner to the Bar on the basis of his certified transcript of results when the same procedure was not applied to many of his intake mates, in particular those who graduated from UNZA, is discriminatory and unconstitutional and offends Articles 8(d) and 266 of the Constitution;
- iv. The conduct of the Respondents in reporting to and colluding with some individuals from ZAF concerning the Petitioner's status at ZIALE to aid those individuals in their attempts to settle their cruel and evil vendetta with and/or against the Petitioner offends Article 173(1)(a) of the Constitution is therefore, unconstitutional;
- v. The decision by the Respondents to delay granting the Petitioner a chance to be heard timeously, and to expose him to the protracted mental torture and anguish and the indefinite

postponement of the disciplinary hearing offends Articles 173(1)(c) and (e) of the Constitution; and

- vi. That the decision by the Respondents to extra-judicially punish the Petitioner in spite of knowing that the facts surrounding the ZAF allegations are subject of litigation in the High Court is tantamount to interring and pre-empting a court process and offends Articles 119 (2) and 122 (2) of the Constitution.

1.15 That as a result of the Respondents' conduct, the Petitioner claims that he has suffered harm, damage and loss.

Particulars of the harm, damage and loss suffered:

- i. That the Petitioner has lost two years of professional earnings as a result of the withholding and withdrawal from being called to the Bar;
- ii. That the Petitioner has suffered extreme victimization by ZAF in collusion with the Respondents which has occasioned him extreme humiliation and mental anguish for two years;
- iii. That the Petitioner has suffered financial loss;

- iv. That the Petitioner has suffered social loss as he cannot freely enjoy the company of his colleagues in law school who are now two years his seniors at the Bar; and
- v. That the Petitioner has suffered mental anguish and trauma from the financial difficulties he has been exposed to on account of the curtailment of the practice of his trade.

1.16 The Petitioner therefore, seeks the following reliefs:

- i. *An Order of Declaration that the decision by the Respondents to collude with ZAF in curtailing the Petitioner's legal career is illegal, unconstitutional and therefore, null and void;*
- ii. *An Order of Declaration that the conduct of the Respondents to take punitive measures against the Petitioner without granting him a right to be heard in his defence while knowing that the facts surrounding the allegations have been contended in a court of law is illegal, unconstitutional and therefore, null and void; and that the said conduct in fact borders on intimidation of the Petitioner interfering with the function of a Judge or Judicial Officer and/or contemptuous;*
- iii. *An Order of Declaration that there is nothing provided for in Rules 29 and 30 that gives power or mandate to the Respondents to withdraw the Petitioner from the list of those to be called to the Bar as a punishment they can met-out and that the said Rules are in fact ultra vires the ZIALE Act, Chapter 49 of the Laws of Zambia which has spelt out limited*

- mandate to the Respondents exclusive to administering the education and examination of the students pursuing legal education for purposes of qualifying to be called to the Zambian Bar, and not to carry out investigations on matters that the Constitution has given specific investigative Commissions to undertake, such as the offence of forgery*
- iv. An Order of Declaration that the conduct of the Respondents to be reporting to ZAF on the status of the Petitioner's call to the Bar unbeknownst to the said to the said Petitioner is in fact conspirational in perpetuating the Petitioner's victimization by a few persons at ZAF, unconstitutional and therefore null and void;*
 - v. An Order of Declaration that the respondents are not an investigative Commission as by the Constitution established and their conduct to purport to investigate the Petitioner and refuse to transfer the matter to state Police for independent investigations is unconstitutional and therefore null and void;*
 - vi. An Order of Declaration that the withdrawal of the Petitioner from the list of graduands to be called to the Bar by the 3rd Respondent on malicious allegations without his being heard was malicious, unconstitutional and therefore null and void ab initio;*
 - vii. An Order of Declaration that the law does not require production of an actual degree certificate for anyone to be called to the Bar, but simply that one has in fact completed and/or obtained a Degree in Law in accordance with the conditions stipulated in section 11 of the Legal*

Practitioners Act Chapter 30 of the Laws of Zambia; and that the ZIALE Policy does not have the force of law to be used to curtail the Petitioner's right to be called to the Bar after successfully clearing his legal Practitioner's Qualifying Examinations;

- viii. *An Order of Declaration that the decision by the 3rd Respondent to reject the Petitioner's request to be given his results for purposes of petitioning the Honourable Chief Justice in order to be called to the Bar on the basis of the said Policy in spite of the fact that the Petitioner had had his results for the attainment and award of his Degree in Law verified and certified by ZAQA as directive by the said respondents is illegal, unconstitutional and therefore null and void;*
- ix. *An Order of Declaration that the decision by the 1st and 3rd Respondents to decline calling the Petitioner to the Bar on account of his ZAQA verified and certified degree when many of his colleagues, especially those from UNZA who had not yet graduated as of the date they were called to the Bar were so called on the same basis of the same ZAQA verification and certification is discriminatory, unconstitutional and therefore null and void;*
- x. *An Order of Declaration that the 2nd and 3rd Respondents acted in a manner below the standard expected of a Judicial and/or Public Officer of their High acclaim and positions in taking instructions from private individuals at ZAF, and conspiratorially participating in the victimization and persecution of the Petitioner;*

- xi. An Order of Certiorari to remove into this Honourable Court the prolonged and protracted disciplinary hearing of the Petitioner, by the Respondents for purposes of dismissing and/or quashing the said intended hearing and substituting therefore with the fitting Orders of this Honourable Court on the matter in light of the provisions of the Constitution and the principles of natural Justice, which the Respondents do not appear willing to uphold and or/ afford the Petitioner;*
- xii. An Order of Mandamus Directing the Respondents to forthwith submit, deliver and/or avail the Petitioner his ZIALE results for purposes of petitioning Honourable Chief Justice for his call to the Bar;*
- xiii. An Order of Prohibition restraining the respondents from interfering with the court process before Her Ladyship Madam Justice M.G. Salasini under cause number 2022/HP/0692 and further restraining them from a continued collusion with ZAF in the victimization of the Petitioner;*
- xiv. An Order of Restitution to restore the Petitioner's professional status to what it could have been if he had been called to the Bar when he should have in 2021;*
- xv. K750,000.00 Compensatory Damages for two years loss of professional earnings;*
- xvi. K2,000,000.00 General Damages for emotional distress, mental anguish, pain and suffering;*
- xvii. K2,000,000.00 Punitive Damages;*

- xviii. *Costs, Pursuant or incidental to these proceeding;*
- xix. *Interest; and*
- xx. *Any other remedy that the court may consider just.*

1.17 The Petition was accompanied by an affidavit verifying facts. He also filed his skeleton arguments on 30th October, 2023.

1.18 In his written arguments, he stresses that the remedies being sought are two- fold, namely; those challenging the constitutionality of Rule 29 of the ZIALE Student Rules and those to do with the decisions of the Respondents with respect to his welfare, rights and interests which offend the Constitution.

1.19 On challenging Rule 29 of the ZIALE Student Rules, it is the Petitioner's contention that the said Rule is unconstitutional as the Constitution under Article 235, has clearly stipulated what investigative commissions and institutions in Zambia are and that ZIALE is not one of them. Further, that the nature of ZIALE as set out under the Zambia Institute of Advanced Legal Education Act, Chapter 49 of the Laws of Zambia (ZIALE Act) is that it carries out its mandate through the ZIALE Council (the Council).

1.20 He argues therefore, that Rule 29 of the ZIALE Student Rules is *ultra-vires* both the Constitution and the ZIALE Act and consequently, any

decision based on it is equally ultra vires, null and void. Further, that even if the supposition was made that the said ZIALE Student Rule 29 aforesaid was not ultra vires, Rule 30(1) of the said ZIALE Rules, provides steps that can be taken or punishments that can be meted out by the Council and that removal of a candidate from the candidature list who has passed his or her examination of those to be called to the Bar is not a step listed in the law.

1.21 The Petitioner argues that the decision to remove him from the list of those to be called to the bar by the 3rd Respondent, whether on her own accord or in collusion with ZAF, or on instructions from the 1st Respondent is ultra vires the ZIALE Student Rules.

1.22 He further submits that even if the decision to remove the Petitioner from the list of those to be called to the Bar was a justifiable step, Rule 30(2) of the ZIALE Student Rules provides that the Council shall before carrying out the decision, notify the student or former student of the complaint and accord that student or former student an opportunity to be heard. That not only was the Petitioner not heard in the matter but that the 3rd Respondent rejected or ignored his numerous attempts and requests to be granted audience or to be heard in this matter before a decision against him was taken.

1.23 At the hearing, the Petitioner relied on the documents and arguments on record and only augmented the 1st claim, being an allegation seeking to impugn the decision of the Respondents to purport to constitute themselves as an investigative commission on the basis that the said decision was ultra vires Articles 8 and 235 of the Constitution.

1.24 The Petitioner posited that Article 235 of the Constitution is close ended in the way it provides for investigative commissions of the State and that the Respondents herein do not appear as part of the investigative commissions of State. That the actions of the Respondents to constitute themselves as an investigative commission contravenes Article 235 of the Constitution and is therefore, unconstitutional.

1.25 The Petitioner prays that this Court should grant all the remedies he seeks.

2.0 Respondents' case

2.1 The Respondents filed their answer on 30th November, 2023 and state that the Petitioner did not clear his legal practitioners qualifying examinations in 2021 as his 2021 examination result slip showed that

he had not passed head 7 (Superior Courts Procedure), which he only sat for and passed at the April 2022 repeater's examinations.

- 2.2. The Respondents further deny the assertions that the Petitioner had been discriminated against the majority of his intake mates that had been issued with certificates to petition the Chief justice of the Republic of Zambia, without bachelor of law degrees issued by their respective universities, on the basis that the said assertions lacked evidential proof.
- 2.3 As regards the alleged forgery investigation against the Petitioner, the Respondents confirmed having written to the Petitioner on 25th October, 2023 following receipt of a complaint from the ZAF Commander informing him of his withdrawal from the list of those to be called to the Bar. The Respondents further confirmed that the Petitioner did write to the Director of the 1st Respondent, but that he did not address any of the allegations of forgery that relate directly to him. Further, that the Petitioner in his letter did not deny the submission of an altered transcript.
- 2.4 The 1st Respondent states that it has not refused nor neglected to conduct a hearing for the Petitioner and that the claim before this Court

is therefore, premature as the matter is an active case before ZIALE and the same has been communicated with the Petitioner at all material times.

- 2.5 On allegations of discrimination, illegality and unconstitutionality by the Respondents, it is contended that the alleged contravention of Article 8 of the Constitution is unenforceable as these are non-justiciable rights and the alleged contravention of Article 235 of the Constitution is misplaced.
- 2.6 The Respondents further contend that the alleged contravention of Article 266 of the Constitution is untenable as the 1st Respondent is not a State institution.
- 2.7 As regards the alleged contravention of Articles 173 (1) (a) (c) and (e) of the Constitution, the Respondents contend that the alleged contravention of the said constitutional provisions is untenable as no evidence has been led and that ZAF is not a party to these proceedings and no order can be made against a non-party to proceedings.
- 2.8 Regarding the alleged contravention of Articles 119 (2) and 122 (2) of the Constitution, it is contended that the said allegation is wrongfully

before this Court as no contravention by the Respondents has been proved.

2.9 In their skeleton arguments, the Respondents argue that the Petitioner has failed to show any breach of the constitutional provisions cited in his petition.

2.10 In responding to the challenge as regards the powers and duties of the 1st Respondent to investigate the Petitioner, it is argued that the 1st Respondent is neither a state institution nor a public office. That the 1st Respondent is established under section 3 of the ZIALE Act as a body corporate with perpetual succession and common seal, capable of suing and being sued in its corporate name. Further, that section 4 of the said ZIALE Act provides for the functions of the Council. That the ZIALE Student Rules provide for the complaint's procedure under Rules 29 and 30 thereof and give power to the Council to investigate any complaint relating to the conduct of a student or a former student.

2.11 That as such, the 1st Respondent's action to investigate the complaint of forgery of was well within its mandate.

2.12 The Respondents also submit that the Petitioner has failed to prove alleged contravention of the Constitution. To that end, various

decisions of both this Court and other courts were cited to demonstrate the high threshold required for a party who alleges to prove and these cases include; *Joseph Malanji v Charles Abel Mulenga and the Electoral Commission of Zambia*¹, *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corporation Limited*², *Khalid Mohammed v The Attorney General*³ and *Akashambatwa Mbikusita Lewanika, Hichuunga Evaristo Kambaila, Dean Namulya Mungomba, Sebastian Saizi Zulu and Jennifer Mwaba v Fredrick Jacob Titus Chiluba*⁴.

2.13 At the hearing of the petition, Ms. Simbeye, learned counsel for the Respondents in her oral submissions reiterated her written arguments with an emphasis that no constitutional provision had been breached to invoke this Court's jurisdiction. She asserts that the matter herein has no constitutional issue to be determined and that what is before this Court is a simple student grievance whose resolution should be determined by reference to the ZIALE Student's Rules conducted in accordance with the ZIALE grievance procedures and that process has not been completed.

2.14 Mr. Chileshe, also learned counsel for the Respondents urged the Court to take into consideration the definition of the word "investigate"

on the basis that there has been an illusion created by the Petitioner that the Respondents are usurping powers enshrined in the Constitution with regards to Article 235 of the Constitution on investigative commissions.

2.15 It is the Respondents' prayer that the petition be dismissed with costs.

3.0 Issues for determination

3.1 We have considered the petition herein with its accompanying affidavit verifying facts, the Respondents' answer and the affidavit in opposition and the Petitioner's reply. We have also considered the arguments both written and oral advanced by the parties as well as the evidence on record.

3.2 We note that the parties in making their respective arguments both in support of and against the petition raised a number of issues, it is our considered view that the central issues falling for this Court's determination as they touch on the Constitution are as follows:

- i. Whether or not Rule 29 of the ZIALE Student Rules is unconstitutional and ultra vires the provisions of Article 235 of the Constitution;

- ii. Whether or not the decision by the Respondents to investigate the Petitioner themselves instead of referring the matter to the State Police for investigations makes the Respondents complainant, judge, jury and executioner in their own cause and is ultra vires Articles 8 and 235 of the Constitution;
- iii. Whether or not the decision by the 3rd Respondent to remove the Petitioner from the list of those to be called to the Bar without being heard in his defence, offends the principles of constitutionalism, in particular the doctrine of natural justice as established and guaranteed under Article 8(c) of the Constitution;
- iv. Whether or not the decision by the Respondents to refuse to call the Petitioner to the Bar on the basis of his transcript of results and certification of the said results by ZAQA, when the same procedure was applied to many of his intake mates in particular those who graduated from UNZA, is discriminatory and unconstitutional and offends Articles 8(d) and 266 of the Constitution;

- v. Whether or not the conduct by the Respondents in communicating with ZAF concerning the Petitioner's status at ZIALE offends Article 173(1)(a) of the Constitution;
- vi. Whether or not the decision by the Respondents to delay granting the Petitioner a chance to be heard timeously and the indefinite postponement of the disciplinary hearing offends Article 173(1)(c) and (e) of the Constitution; and
- vii. Whether or not the decision by the Respondents to deal with the issue of forgery which is subject of litigation in the High Court is tantamount to interring and pre-empting a court process and offends Articles 119(2) and 122(2) of the Constitution.

4.0 Analysis and determination

4.1 It is trite that the jurisdiction of this Court as enshrined in Articles 128(1) of the Constitution as read with section 8 of the Constitutional Court Act is very specific to determining constitutional questions. A person approaching this Court should therefore, have a constitutional question or issue that he/her wants to be resolved. As such, in determining the petition before this Court, we shall focus only on issues that allege

breach of the Constitution and only relating to the parties before this Court.

4.2 We will start with the question of whether or not Rule 29 of the ZIALE Student Rules is ultra vires the provisions of Article 235 of the Constitution.

4.3 Article 235 of the Constitution provides as follows:

There is established the following investigative commissions:

(a) the Anti-Corruption Commission;

(b) the Drug Enforcement Commission; and

(c) the Anti-Financial and Economic Crimes Commission.

4.4 Rule 29 of the ZIALE Student Rules on the other hand provides as follows:

29(1) The Council may on its own motion or on receipt of a complaint, investigate a complaint relating to the conduct of a student, former student or of a person who, having been enrolled as a student but whose certificate of enrolment is considered under these Rules to be of no effect and who applies to be re-enrolled.

(2) A complaint to the Council shall be lodged with the Secretary who shall refer that complaint to the Council unless the Secretary considers that the complaint is frivolous. (Emphasis added).

4.5 Rule 30 of the ZIALE Student Rules further details the punishments that may be meted at the conclusion of the investigation. It enacts as follows:

30. *The Council may, where a complaint discloses the conduct complained against—*

(a) admonish the student or former student and cause an entry of that admonishment to be made against that student or former student's name on the student's register;

(b) refuse to register the articles or further articles of the student or former student;

(c) postpone the date on which the student or former student may sit for any examination or any Head or Part of the examination provided for in these Rules;

(d) refuse to reenroll the former student; or

(e) revoke the certificate of enrolment of the student.

(2) The Council shall, before carrying out the decision under sub Rule (1), notify the student or former student of the complaint and accord that student or former student an opportunity to be heard.

4.6 We have carefully considered the provisions of Article 235 of the Constitution above and note that the provision lists; the Anti-Corruption Commission, the Drug Enforcement Commission and the Anti-Financial and Economic Crimes Commission as investigative commissions established under that provision.

4.7 Having in mind that constitutional provisions should not be read in isolation, we note that there are other commissions and State institutions other than those stipulated under Article 235 of the Constitution clothed with investigative powers. These other institutions such as the Judicial Complaints Commission established under Article 236 of the Constitution which receives and investigates complaints

against judges and judicial officers, the Police Public Complaints Commission established under Article 237 of the Constitution which receives and investigates complaints against police actions to name but a few. The investigative commissions referred to in Article 235 the Constitution are different in form and nature to the investigations that can be undertaken by body corporates created by statute. The Petitioner has clearly misapprehended Article 235 in relation to Rule 29 of the ZIALE Student Rules. There is no correlation between Article 235 and Statutory Instrument Number 49 of 2019.

4.8 We therefore, find that Rule 29(1) of the ZIALE Student Rules is not unconstitutional. It gives the 1st Respondent herein the power to investigate complaints relating to the conduct of a student or former student having been enrolled as a student. Rule 29 of the ZIALE Student Rules is not inconsistent with Article 235 of the Constitution. Thus this claim fails and is dismissed.

4.9 The other issue raised is whether or not the decision by the Respondents to investigate the Petitioner instead of referring the matter to the State Police for investigations makes the Respondents complainant, judge, jury and executioner in their own cause and is ultra vires Articles 8 and 235 of the Constitution. Further, the Petitioner asks

whether or not the decision by the 3rd Respondent to remove the Petitioner from the list of those to be called to the Bar without being heard in his defence offends the principles of constitutionalism, in particular the doctrine of natural justice as established under guaranteed under Article 8(c) of the Constitution.

4.10 In the preceding paragraphs we have adequately canvassed the issue as regards the alleged contravention of Article 235 of the Constitution. We shall therefore, only look at the alleged breach of Article 8 of the Constitution.

4.11 Article 8 of the Constitution provides for national values and principles. We note that the Petitioner has not brought any evidence linking his case to the alleged breach of Article 8 of the Constitution by the Respondent. Further, having established that there was no breach of Article 235 of the Constitution upon which he is anchoring the alleged breach of Article 8 of the Constitution, we find that these allegations lack evidential proof and are consequently dismissed.

4.12 The Petitioner also alleges that the Respondents' refusal to call him to the Bar on the basis of his transcript of results and certification of the said results by ZAQA when the same procedure was not applied to

many of his intake mates, in particular those who graduated from UNZA, is discriminatory and unconstitutional and offends Articles 8(d) and 266 of the Constitution and therefore, null and void.

4.13 The Petitioner in this regard raises the issue of discrimination. He asserts that he was discriminated against by the Respondents as his intake mates were not subjected to the same process as applied to him. Clearly, this claim is anchored on the right not to be discriminated upon as provided for in the Bill of Rights contained in Part III of the Constitution. In the case of *Godfrey Malembeka v The Attorney General and The Electoral Commission of Zambia*⁵ we guided that actions relating to enforcement of the rights and freedoms contained in Part III of the Constitution must be commenced in the High Court. It is therefore, our finding that this Court has no jurisdiction to enforce this claim, as it falls outside the realm of its jurisdiction as provided for under Article 128 of the Constitution. It follows that this claim fails.

4.14 The Petitioner also alleges that the Respondents' conduct of reporting and colluding with some individuals from ZAF concerning the Petitioner's status at ZIALE to aid those individuals in their attempts to settle their cruel and evil vendetta with and/or against the Petitioner

offends Article 173(1)(a) of the Constitution and is therefore, unconstitutional.

4.15 The Petitioner cites Article 173(1)(a) of the Constitution as having been breached as a result of the alleged collusion between the Respondents and some individuals from ZAF. Article 173(1)(a) of the Constitution provides as follows:

(1) The guiding values and principles of the public service include the following—

(a) maintenance and promotion of the highest standards of professional ethics and integrity;

4.16 The Petitioner has not shown the nexus between the allegations of collusion by the Respondents and some individuals from ZAF concerning the Petitioner's status at ZIALE with Article 173(1)(a) of the Constitution. ZIALE is a public institution and its records are public. We see no contravention of Article 173(1)(a) of the Constitution by the communication between the Respondents and the Petitioner's former employer. Further, no evidence was brought forward to show that the communication between these parties was not done within the required standards of professional ethics and integrity. The upshot therefore, is that this claim fails.

4.17 The Petitioner, furthermore, alleges that the 1st Respondent's delay in granting him a chance to be heard timeously and thus exposing him to protracted mental torture and anguish by the indefinite postponement of the disciplinary hearing ultimately offends Article 173(1)(c) and (e) of the Constitution.

4.18 Article 173(1)(c) and (e) of the Constitution provides as follows:

173. (1) The guiding values and principles of the public service include the following-

(c) effective, impartial, fair and equitable provision of public services

(e) prompt, efficient and timely response to people's need.

4.19 It is clear that the 1st Respondent herein is established under an Act of Parliament. It is therefore, our considered view that by virtue of the 1st Respondent being a statutory body, it is required to act in line with the guiding values and principles of the public service.

4.20 Article 267 of the Constitution enjoins us to '*interpret the Constitution in accordance with the Bill of Rights and in a manner that promotes its purposes, values and principles.*'

4.21 There is therefore, need for statutory bodies including ZIALE to provide prompt, efficient and timely response to the issues that are before them

as this is one of the values and principles enshrined in Article 173(1)(e) of the Constitution.

4.22 In this matter the Petitioner has taken issue with the manner in which the Respondents have handled the complaint lodged by ZAF against him on 12th August, 2022. The disciplinary hearing was initially scheduled to take place on 19th October, 2023 but was indefinitely postponed and is thus still pending. Hence, that there has been inordinate delay in concluding the investigation and hearing him to his detriment.

4.23 We note that the ZIALE Student Rules do not specify a timeframe within which complaints against students or former students are to be heard and determined. However, this does not mean that there should be inordinate delay in doing so. Despite the unfortunate circumstances, the delay does not translate into a constitutional issue. We say so because the provision and procedure for disciplinary hearing is contained in the ZIALE Act and the attendant Student Rules and is thus a matter anchored on legislation. It follows that if processes and procedures are not followed as provided in relevant legislation, there

is recourse to the Petitioner such as judicial review before appropriate courts.

4.24 In the case of *Lloyd Chembo v The Attorney General*⁶ ruling delivered on 23rd April, 2018, where the petitioner alleged violation of the Constitution when the High Court adjourned his partially heard matter for 11 months, this Court stated at pages R32 and R33 of the Ruling that the 11-month adjournment did not mature into a constitutional issue for the Court's determination as there were other remedies available in the High Court. This was done after considering the fact that the Constitutional Court deals with direct violations of the Constitution while the rest of the law is adequately handled by other courts. Therefore, to ensure the prudent and responsible use of public resources, a matter must be ripe before it can be heard as a constitutional violation.

4.25 It follows that, if there is a complaint as to how the disciplinary process involving the Petitioner has been or is being handled arising from the provisions in the ZIALE Act, the right place to take that complaint is a court of competent jurisdiction that deals with the interpretation and enforcement of Acts of Parliament and not this Court. We therefore,

are of the considered view that there is no constitutional issue to be adjudicated upon by this Court on this claim. This claim fails and is dismissed.

4.26 The Petitioner has also alleged that the Respondents have extra judicially punished him in spite of knowing that the facts surrounding the ZAF allegations are subject of litigation in the High Court. That this is tantamount to interfering and pre-empting a court process and offends Articles 119(2) and 122(2) of the Constitution.

4.27 Articles 119(2) and 122(2) of the Constitution provide as follows:

119 (2) The courts shall perform the following judicial functions:

- (a) hear civil and criminal matters; and*
- (b) hear matters relating to, and in respect of, this Constitution.*

122 (2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer.

4.28 We have examined these two constitutional provisions as they relate to the allegation made by the Petitioner. We see no connection as to how the allegation relates to the High Court's jurisdiction in performing the judicial functions to hear civil and criminal matters. The matter relating to and in respect of the Constitution is being brought in play solely because there was a complaint by the Petitioner against his former employer in a judicial review matter before the High Court.


There are no specific allegations that the High Court is not performing its judicial functions as provided for under Article 119(2) of the Constitution. This allegation lacks merit and is dismissed.

4.29 Equally, there is no proof that ZAF or any other person holding public office is interfering with the performance of a judicial function of the judge hearing the Petitioner's judicial review proceedings in the High Court under cause No. 2022/HP/0692 against the dictates of Article 122(2) of the Constitution. This allegation is misconceived and accordingly fails.


4.30 Conclusion

4.31 The Petitioner has failed to prove his claims as regards constitutional breaches to entitle him to the declaratory and other remedies he seeks in his petition. The petition lacks merit and it is hereby dismissed.

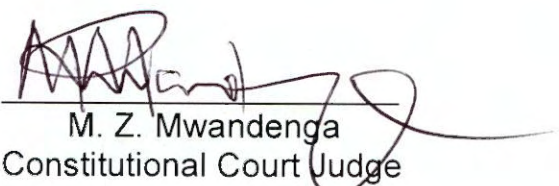
4.32 We order each party to bear own costs.



M. Musaluke
Constitutional Court Judge



M.S. Mulenga
Constitutional Court Judge



M. Z. Mwandenga
Constitutional Court Judge