

**IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA**

2023/CCZ/0025

(Constitutional Jurisdiction)

**IN THE MATTER OF: THE CONSTITUTION 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**

**IN THE MATTER OF: ARTICLE 74 (2) OF THE CONSTITUTION OF
ZAMBIA**

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

AND

**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 ASEEMBLY TO ACCEPT THE
APPOITMENT OF THE LEADER OF THE
OPPOSITION IN THE NATIONAL ASSEMBLY
WITHOUT AN ELECTION**

BETWEEN:

MOSES SAKALA

AND

THE ATTORNEY GENERAL

**MORGAN NG'ONA (Sued in his capacity as Secretary
General of the Patriotic Front)**

BRIAN MUNDUBILE



PETITIONER

1ST RESPONDENT

2ND RESPONDENT

INTENDED PARTY

Before the Hon. Mr. Justice K. Mulife in Chamber on 20th and 23rd February, 2024.

APPEARANCES:

For the Petitioner:	Mr. S. F. Chipompela and Mr. J. Phiri – Both of Messrs Joseph Chirwa and Company
For the 1 st Respondent:	Ms. A. Chisanga- Principal State Advocate - Attorney General's Chambers
For the 2 nd Respondent:	No appearance
For the Intended Party:	Mr. P. Chulu – Messrs Patrick Chulu Legal Practitioners

RULING

Cases Referred to:

1. Mike Hamusonde Mweemba v Zambia State Insurance Corporation (2006) Z.R 101.
2. Corpus Legal Practitioners v Mwanandami Holding Limited SCZ Judgement No. 50 of 2014.
3. Attorney General and Movement for Multi-Party Democracy v Akashambatwa Mbikusita Lewanika and Others (1994) ZR 164.
4. Abel Mulenga and Others v Chikumbi and Others (2006) ZR 16.
5. Dan Pule and Others v Attorney General and Others 2017/CCZ/0004.
6. Mulenga v Mumbi ex parte Mhango (1975) Z.R 78.
7. Stanbic Bank v Micoquip Zambia Ltd SJ No. 22 of 2018.
8. Sean Tembo v the Attorney General 2018/CCZ/0007.

9. John Sangwa v the Attorney General 2021/CCZ/0035.

Statutes Referred to:

1. The Constitutional Court Act No. 8 of 2016.
2. The Constitutional Court Rules, Statutory Instrument No. 37 of 2016.
3. The Rules of the Supreme Court Practice, 1999 Edition (White Book). London: Sweet & Maxwell.

1.0. INTRODUCTION

1.1. This is a Ruling on the Intended Party's "**Summons for an Order for Leave to Join a Party to the Proceedings**" (Summons), filed into Court on 13th February, 2024. The Summons is anchored on **Order V, rule 4 (b) of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (CCR)**. It is supported by an Affidavit sworn by the Intended Party as well as skeleton arguments and list of authorities. It was filed ex-parte. However, on 14th February, 2024, I ordered that it comes up inter-partes.

2.0. INTENDED PARTY'S SUMMONS

2.1. The Summons was triggered by the Petitioner's Petition filed into Court on 29th November, 2023. The Petition is challenging the constitutionality of the selection of the Intended Party by his

political party (Patriotic Front) and his subsequent recognition by the Speaker of the National Assembly (Speaker), as Leader of the Opposition in the National Assembly.

- 2.2. The Intended Party was not cited as a party to the Petition hence the subject Summons.
- 2.3. According to the Affidavit in support of the Summons, the Intended Party was elected Leader of the Opposition in the National Assembly in August, 2021. His tenure of office was in due course (on a date he did not state), allegedly illegally terminated by the Speaker.
- 2.4. That arising from the foregoing, he has sufficient interest in the Petition because he will be affected by the outcome thereof.
- 2.5. For completeness, the Petition is seeking the following reliefs:
 - 2.5.1. A declaration that the appointment of the intended Party as Leader of the Opposition was null and void ab initio, as it was done in contravention of Article 74(2) of the Constitution (Amendment) Act No. 2 of 2016 (Constitution);
 - 2.5.2. A declaration that the 1st Respondent, through the Speaker, contravened Article 74(2) of the Constitution and Rule 43 of the National Assembly Standing Orders by

accepting the appointment of the Intended Party, as Leader of the National Assembly and allowing him to draw all entitlements accrued to the said office;

2.5.3. A declaration that the 2nd 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; and

2.5.4. An order that all monies and monetary benefits obtained by the Intended Party by virtue of his illegal tenure of office, be accounted for and recovered.

2.6. In his Skeleton Arguments, the Intended Party submits that **Order 5, rule 4 (b) of the CCR and Order 15, rule 6(2) (b) (i) of the Rules of the Supreme Court, 1965 (White Book)**, bestows upon me, the power of joinder. That this power applies where it is established that a person to be joined is entitled, claim some share or interest in the subject matter of the suit or is likely to be affected by the outcome of the proceedings.

2.7. In support of this proposition, the Intended Party cited the cases of **Mike Hamusonde Mweemba v Zambia State Insurance**

Corporation¹ and Corpus Legal Practitioners v Mwanandami Holding Limited².

- 2.8. At the hearing on 20th February, 2024, Mr. F. Chulu, counsel for the Intended Party, informed me that he would rely on the Petitioner's documents afore-stated. Counsel further cited the ruling in the case of **Institute of Law, Policy Research and Human Rights Limited v Attorney General and Brian Mundubile³**, in which a single Judge of this Court joined the Intended Party to the Originating Summons, on grounds that he has interest in the matter.
- 2.9. Counsel stressed that the reliefs being sought in the Petition, directly affects the Intended Party. As such, he should be given an opportunity to be heard.
- 2.10. In conclusion, counsel urged me to grant the order of Joinder with costs to the Intended Party.

3.0. THE PETITIONER'S OPPOSITION

- 3.1. Only the Petitioner opposed the Summons. In doing so, he filed into Court, an affidavit in opposition as well as list of authorities and skeleton arguments, on 19th of February, 2024.

- 3.2. He avers that the Intended Party will not be affected by the outcome of the Petition because he was expelled from the Patriotic Front hence no longer a member thereof.
- 3.3. He also avers that that the removal of the Intended Party from the position of Leader of the Opposition was lawful; that the Petition is challenging the Patriotic Front and the Speaker in the manner they installed the Intended Party as Leader of the Opposition. And, that the sought reliefs are directed at the 1st Respondent.
- 3.4. Without demonstrating how, the Petitioner also averred that he would be prejudiced by the joinder of the Intended Party.
- 3.5. The Petitioner repeated the foregoing in his Skeleton Arguments save to contend that the Intended Party has not demonstrated sufficient interest to warrant the sought joinder. In support of this, he cited **Order 5, rule (4) (b) of the CCR, Order 15, rule 6 (2) (b) (i) of the White Book**, and the cases of **Attorney General and Movement for Multi-Party Democracy v Akashambatwa Mbikusita Lewanika and Others⁴, Mike Hamusonde Mweemba v Obote Kasongo and Zambia State Insurance¹, and Abel Mulenga and Others v Chikumbi and Others⁵**.

- 3.6. At the hearing, counsel for the Intended Party similarly relied on the Intended Party's documents on record. He opposed the Petitioner's prayer for costs on grounds that the Petition raises matters of public interest and that the Intended Party shall not be prejudiced if not awarded costs.
- 3.7. Ms. A. Chisanga, counsel for the 1st Respondent, adopted the Intended Party's submissions. The 2nd Respondent did not attend the hearing despite having been served with the requisite court process. He shall be bound by this ruling.

4.0. CONSIDERATION AND DECISION

- 4.1. I have considered the parties' respective documents afore-stated and their oral arguments. The issue for determination is whether or not the Intended Party should be joined to the Petition. Suffice to state, at the outset, that **Order V, rule 4(b) of the CCR** bestows on me jurisdiction to make an order for joinder. Quoting only relevant portions, it states as follows:

The Court may, at any stage of the proceedings, upon or without the application of a party, and on such terms as may appear just, order...

(b) any person who ought to have been joined, or whose presence before the Court may be necessary in

order to enable it adjudicate upon and settle the matter, be added.

4.2. On the authority of **Order I, rule 2 of the CCR**, I have found it compelling to further refer to **Order 15 of the White Book**. **Order I, rule 2 of the CCR** empowers me to refer to the White Book under circumstances where the Constitutional Court Act, No. 2 of 2016 and the CCR do not make provision for practice and procedure for handling an issue under consideration.

4.3. I have been compelled to refer to **Order 15 of the White Book**, because apart from bestowing on me the power of joinder, the provision also provides for matters which are not contained in the CRR, namely, factors to be considered by the court when making an order of joinder. Quoting only relevant parts, the provisions stipulates as follows:

15/6(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application...

(b) order any of the following persons to be added as a party, namely -

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to

ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

- 4.4. It is clear from the foregoing provisions that a party seeking to be joined to the proceedings must demonstrate sufficient interest in the matter. This resonates well with the Ruling of this Court dated 15th September, 2017, in **Dan Pule and Others v Attorney General and Others**⁶, and the cases of **Attorney General and Movement for Multi-Party Democracy v Akashambatwa Mbikusita Lewanika and Others**, **Mike Hamusonde**

Mweemba v Obote Kasongo and Zambia State Insurance and Abel Mulenga and Others v Chikumbi and Others, cited above by the parties.

- 4.5. Turning to the present Summons, parties have fronted conflicting versions. Whereas the Intended Party contends that he has sufficient interest in the Petition, the Petitioner has argued to the contrary.
- 4.6. I have been greatly aided by the Petition in determining whether or not the Intended Party has sufficient interest in the Petition. In this regard, paragraphs 7-9 of the Petition and the attendant reliefs highlighted under paragraph 2.5 of this ruling, are insightful. They are clearly challenging the constitutionality of the Intended Party's ascendance to the office of Leader of the Opposition in the National Assembly. Further and contrary to the Petitioner's argument, the declarations or reliefs being sought, are not directed to the Respondents. Rather, they are directed to the Intended Party.
- 4.7. In view of the foregoing, the Intended Party shall undoubtedly be affected by the outcome of the Petition and this is what

constitutes sufficient interest in the matter, for purposes of joinder.

4.8. For avoidance of doubt, the stated paragraphs are reproduced hereunder:

7. Following the General Election results, the 2nd Respondent, through its then Secretary General, Davies Mwila, wrote to the Speaker of the National Assembly, informing her that the PF appointed one Honourable Brian Mundubile, the Member of Parliament for Mporokoso Constituency, as Leader of the Opposition.

8. The Appointment of the said Brian Mundubile, as Leader of the Opposition, was done in the absence of an election by Members of Parliament from the opposition PF, as prescribed by the Constitution which is the Supreme Law of the Land.

9. Further, the speaker of the National Assembly perpetuated the unconstitutional acts of the 2nd Respondent by accepting the said appointments as valid at law and accorded him the privileges and entitlements of the Office of the Leader of the Opposition.

4.9. In any event, the Petitioner concedes in paragraph 3.5 of his skeleton arguments and list of authorities, that the Intended Party

may be affected by the outcome of the Petition. He expresses this in the following terms:

“...we submit that the mere fact that he may be affected by the outcome of the matter is not itself sufficient to warrant a grant of non-joinder in this matter”.

4.10. Based on the foregoing, it would be a miscarriage of justice, for the sought reliefs to be made against the Intended Party, in the event the Petition succeeds, without giving him an opportunity to be heard. Here, I am persuaded and find appropriate, the cases of **Mulenga v Mumbi ex parte Mhango**⁷, **Stanbic Bank v Micoquip Zambia Ltd**⁸, where the Supreme Court of Zambia held inter alia that no order can be made to the detriment of an individual unless he is a party to the proceedings and is given an opportunity to be heard before any such order can be made.

4.11. In view of the foregoing, I am satisfied that this is a proper case for me to exercise my discretion to join the Intended Party to the Proceedings as a 3rd Respondent.

4.12. Regarding the Intended Party's prayer for costs, it is a settled principle of law, that costs are in the judicious discretion of the court. This is in accordance with **section 30 of the Constitutional Court Act No. 8 of 2016, Order XIII, Rule 1 of**

the CCR as well as the cases of **Sean Tembo v the Attorney General**⁹, and **John Sangwa v the Attorney General**¹⁰.

4.13. With this in mind, I have anxiously considered the record of proceedings but could not find a compelling reason upon which to exercise my discretion to award costs to the Intended Party. I therefore decline the prayer for costs and parties shall accordingly bear their respective costs.

5.0. CONCLUSIONS AND ORDERS

5.1. The Intended Party's prayer for an order for joinder is granted.

He is forthwith joined to the Petition as the 3rd Respondent

5.2. To accommodate the 3rd Respondent, I hereby vary my order of directions issued as follows:

5.2.1 The Respondents shall file their answers to the Petition and affidavits in opposition, on or before 28th February, 2024;

5.2.2. The Petitioner shall file replies if any, on or before 6th March, 2024;

5.2.3. If parties desire to call witnesses, they shall file Witness Statements, on or before 11th March, 2024;

5.2.4. Parties shall file list of authorities and skeleton arguments on or before 15th March, 2024;

5.2.5. Parties shall file bundles of documents, if any, after conducting inspection and discovery, on or before 20th March, 2024;

5.2.6. The Petitioner shall file the Record of Proceedings on or before 27th March, 2024; and

5.2.7. A Compliance Conference shall be held on 28th March, 2024 at 09:00hrs, in chambers.

6.0. Parties shall bear their respective costs.



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K. MULIFE

CONSTITUTIONAL COURT JUDGE