

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2022/HP/1214**

**IN THE MATTER OF: ORDER 53 RULE 3 OF THE RULES OF  
THE SUPREME COURT**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF: THE DECISION OF THE  
ENGINEERING INSTITUTE OF  
ZAMBIA - ETHICS AND INTERGRITY  
COMMITTEE**

**BETWEEN:**

**ABEL NG'ANDU  
DIANA KANGWA  
SHARON MUSONDA  
CHIZA NYIRENDA  
JANE MANASE**



**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT  
5<sup>TH</sup> APPLICANT**

**AND**

**ENGINEERING INSTITUTION  
OF ZAMBIA**

**RESPONDENT**

**Before the Hon. Mrs Justice S. M Wanjelani in Chambers on  
the 6<sup>th</sup> day of March, 2023**

*For the Applicants: D Jere, with T. Mwanza, Messers Dickson  
Jere and Associates.*

*For the Respondent: M. Ndalameta, Messers Musa Dudhia and  
Company*

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**JUDGMENT**

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### **Cases referred to:**

1. *Mungomba and Others V Machungwa and Others, SCZ Judgment No.3 Of 2003*
2. *Fredrick Titus Chiluba V the Attorney General (2003) ZR 153*
3. *R V the Panel on Take-Overs and Mergers, ex.p. Datafin Limited (1987) QB815*
4. *Nyampala Safaris (Z) Limited and Others vs. Zambia Wildlife Authority and Others (2004) ZR 49*

### **Legislation referred to:**

1. *The Engineering Institution of Zambia Act No.17 of 2010*
2. *The Rules of the Supreme Court, 1999 Edition*

1. This is a Judgment on the Applicant's application to commence judicial review proceedings against the Respondent.
2. The Applicant filed for and was granted Leave to commence judicial review proceedings against the Respondent's Ethics and Integrity Committee's decision to annul the entire elections of the Council elected on 23<sup>rd</sup> April, 2022. The application for judicial review was filed pursuant to **Order 53 Rule 1 of the Rules of the Supreme Court**. The Originating Notice of Motion was accompanied by an Affidavit verifying facts, a Statement and Skeleton arguments.

#### **The Applicants' affidavit evidence**

3. According to the Affidavit verifying fact sworn by **Abel Ng'andu** on behalf of the other Applicants, he and the other Applicants were declared winners of the elections of their respective positions and the said elections were declared free and fair and further validated by the Nominations and Elections Committee(NEC) and

Caritas Zambia who observed the elections as per the Reports exhibited collectively as “AN1”.

4. He deposed that any party aggrieved with the results of the elections was expected to file notification within forty-eight hours after the results were announced of the intention to petition the election results for each specific elective position.
5. That the person aggrieved with the election result is further required to file a substantive election petition within one-week after the election, which petition is expected to be determined by the Ethics and Integrity Committee of the Respondent.
6. The Deponent stated that to his knowledge and information received him, only one position of Vice President (Policy and Public Relations) was petitioned by an aggrieved party within the stipulated timelines as required by the EIZ Constitution and Rules promulgated thereof. He added the petition for the position was Vice President (Policy and Public Relations) was tabled before the Ethics and Integrity Committee as required by the Constitution of EIZ.
7. It was averred that the Committee at its sitting were informed by the Registrar of the Respondent that the Committee’s Rules, Procedures and Guidelines were still in draft form and were never adopted by the relevant organs of the Respondent and therefore could not be used to determine any matter before it.
8. That however, the Committee proceeded to use the same draft Rules to hear and determine a petition that was

filed for the position of the Vice Presidency (Policy and Public Relations), and that following the hearing, the Committee Members decided to use that single petition to annul all other elections of the 1<sup>st</sup> Applicant and other Applicants herein when there was no challenge to their elections.

9. The Deponent stated the Chairperson of the Committee who is a prominent and eminent lawyer drawn from the Law Association of Zambia warned his Committee Members that “the decision to annul all elections was a huge undertaking which was going to be challenged since it was difficult to annul all 12 positions of the elections based on one petition”, as per the exhibited copy of the Report of the Committee marked “**AN 2**”.
10. It was averred that the Chairperson of the Committee further warned his Members that “it was also difficult to interpret the powers of nullifying the elections devoid of constitutional procedures and guidelines”.
11. The Deponent deposed that he and other Applicants herein were never informed of any petition or invited by the said Ethics and Integrity Committee to present their positions on their elections to various positions but instead their elections were nullified without being heard.
12. He added that the Applicants engaged a Lawyer from Messrs Dickson Jere and Associates to demand for the immediate rescinding of the decision of the Committee of the Respondent as the said decision was illegal,

devoid of reason and procedurally wrong, as per the exhibited Letter of demand marked **“AN 3”**.

13. That the Respondent responded to the demand Letter through its Lawyers Messrs. Musa Dudia and Company who indicated that they studied the circumstances of the case and would revert to the Applicants’ Lawyers but the decision was not stayed or rescinded, as reflected in the letter marked **“AN 4”**.

14. He vied that the Committee had instructed the Registrar to announce the annulment of the entire elections when the Committee had only received one petition for the position of Vice President (Policy, Public Relations) and other positions were never petitioned.

15. That due to the nullification of the entire elections of the Council of the Respondent, Members were demanding for the holding of the Extra-Ordinary General Meeting (EGM) to elect the new leadership based on the Report of the Ethics and Integrity Committee. To this end, he produced a Notice for the EGM marked **“AN 5”**.

16. The Deponent contended that the provisions of the Engineering Institute of Zambia (EIZ) Constitution are clear in so far as the handling of the election disputes and petitions and the Ethics and Integrity Committee did not adhere to the said procedures and guidelines outlined in the EIZ Constitution marked **“AN 7”**.

### **Reliefs Sought**

17. Consequently, the Applicants seek the following reliefs:

- a) *An Order of Certiorari to remove into the High Court for Zambia for purposes of quashing the decision of the Ethics and Integrity Committee of the Engineering Institution of Zambia to nullify the entire election held on the 23<sup>rd</sup> April, 2022 as the said decision was made without following the laid down procedures and the law.*
- b) *A declaration that the decision of the Ethics and Integrity Committee of the Engineering Institution of Zambia to nullify the entire elections held on the 23<sup>rd</sup> April, 2022 and without giving the Applicants herein an opportunity to be heard in accordance with the law is null and void and is of no effect as the said decision was unreasonable in that it was made without taking into account the circumstance of each case.*
- c) *If leave applied for is granted the direction that such grant should operate as a Stay of the decision to which this application relates pursuant to Order 53 Rule 3(10) of the Rules of the Supreme Court.*

### **Grounds for the reliefs sought**

18. The Applicants stated that the decision of the Integrity and Ethics Committee to annul the elections of the Applicants on 23<sup>rd</sup> July, 2022 without following the laid down procedures set out in the EIZ Constitution and the decision of the Respondent to ignore or refuse rescind its decision of nullification of the entire Council

elections even when they were informed that the action was contrary to the law, are illegal and unreasonable.

19. That the Committee subjecting the petition of the Vice Presidency to draft Rules of Procedure, which have not been approved by the relevant Organs of the EIZ breached the procedures.

### **The Respondent's opposition**

20. The Respondent filed an Affidavit in Opposition sworn by **Lusungu Nyirenda**, a Member of the Council of the Respondent Institution who essentially confirmed the Applicants' averments as regards the events and the annulment of the entire election following petitioning of one position of Vice President (Policy and Public Relations), by Charles Shindaile within the stipulated timelines as required by the Respondent's Constitution.

21. The Deponent confirmed that the Respondent Institution has not yet promulgated Rules for the determination of election petitions by the Ethics and Integrity Committee but that nonetheless, on 14<sup>th</sup> July 2022, the Ethics and Integrity Committee heard the Petition and decided to annul the election of all the elected Members of the Council of the Respondent Institution on 20<sup>th</sup> July 2022.

22. He further confirmed that the Ethics and Integrity Committee annulled the election of the Applicants without giving them an opportunity to be heard, and against the guidance of the Chairperson of the said Committee.

23. He contended that the Ethics and Integrity Committee's decision has been disruptive of the Respondent Institution's regulatory function and day to day affairs and thus supports the Order of staying the Ethics and Integrity Committee's decision pending determination of judicial review proceedings.

24. The Deponent added that while the Respondent institution did receive a letter of demand from the Applicants in relation to the nullification of their election, its Constitution provides that the decision of the Ethics and Integrity Committee is final and the Respondent Institution considered itself bound.

25. Further that while the Respondent recognizes the various flaws in the decision making process of the Ethics and Integrity Committee, the Respondent is bound its Constitution and is not in a position to grant the Applicants the relief they seek.

26. And that the Respondent further seeks the Court's guidance on whether the Respondent has the power to correct a manifestly flawed decision by one of its organs or Committees.

### **Submissions**

27. The respective Counsel filed submissions which I shall refer to in the course of this judgment where necessary.

### **Determination of this Court**

28. I have considered the application and the submissions by respective Counsel. It is trite that judicial review is concerned with the decision making process of a public



body to which an individual has been subject and not the merits of the decision.

29. Thus this Court has to consider whether the public body had the power to act in the matter in the manner it did, whether they followed procedure, whether they exceeded their jurisdiction as elaborated by the Supreme Court in the cases of **Mungomba and Others v Machungwa and Others** <sup>(1)</sup> and **Fredrick Titus Chiluba V the Attorney General** <sup>(2)</sup>.

30. The history under **Order 53 of the Rules of the Supreme Court**, states that the public law remedy of Judicial review was introduced to create:

*"a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals or other persons or bodies which perform public duties"*

31. With respect to the Respondent's Ethics and Integrity Committee's decision being amenable to judicial review, I note the holding of the Court of Appeal of England in the case of **R V the Panel on Take-Overs and Mergers, ex.p. Datafin Limited** <sup>(3)</sup> which held, inter *alia*:

*"...that judicial review would lie against the Take-over Panel notwithstanding the fact that it is part of a self-regulatory system and does not derive its authority or powers from statute."*

32. There is no question that the Respondent's Ethics and Integrity Committee does not derive its power from a statute but it is akin to a tribunal as its role includes resolving the nomination and election disputes to various elective positions within the Respondent institution. It is thus bound to execute its duties in conformity with the established rules for the conduct of its mandate in determining disputes presented to it while observing the rules of natural justice and fairness.
33. There is no dispute again that there was only one position that was challenged and yet the Committee proceeded to annul the entire elections using unapproved draft rules and without affording the Applicants an opportunity to be heard.
34. In the case of **Nyampala Safaris (Z) Limited and Others vs. Zambia Wildlife Authority and Others** <sup>(4)</sup> the grounds for judicial review were restated, in the holding, as follows:
- (a).....*
  - (c) A decision of an inferior court or public authority may be quashed (by an order of certiorari) where that court or authority acted:*
    - (i) without jurisdiction; or*
    - (ii) exceeded its jurisdiction; or*
    - (iii) failed to comply with the rules of natural justice where those rules are applicable; or*
    - (iv) where there is an error of law on the face of the record; or*

***(v) the decision is unreasonable in the Wednesbury sense, namely, that it was a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably, could have reached.”***

35. In casu, there is no dispute that there was one Petition that was presented to the Ethics and Integrity Committee, but the Committee annulled the entire election thereby affecting positions that were not challenged. This was clearly outside the Committee’s jurisdiction as they could not determine a matter that was not before them and further they used draft rules which rendered the proceedings a nullity for want of, or excess jurisdiction.

36. In addition, the affected individuals were not given an opportunity to be heard contrary to the rules of natural justice that demand that a person should be treated fairly and should not be condemned without being heard.

37. The above facts clearly show that the Committee’s decision making process was marred with illegality, procedural impropriety and unreasonableness in the Wednesbury sense in “*that it was a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably, could have reached.*”

38. The Respondent had sought guidance on whether it has the power to correct a manifestly flawed decision by

one of its organs or Committees. In my view, an Institution is guided by its Constitution to regulate its affairs. If any provision of the Constitution is proving problematic to implement, it is within that Institution's jurisdiction to make the relevant amendments depending on its constitutional provisions. In fact, **section 5 of the Engineering Institution of Zambia Act** provides:

***“(1) The Institution shall, by a vote of at least two thirds of the Members voting at a general meeting of the Institution, adopt a constitution and may, in the like manner, amend it.”***

Even *Article 11* of the Respondent's Constitution makes provision for its amendment and the procedure to be adopted in doing so.

39. The Respondent has beseeched the Court not to award the costs against it, as its hands were tied and could not do anything despite disagreeing with the Ethics and Integrity Committee's decision. This was in view of the Constitution providing that the Committee's decision was final. In my opinion, the Respondent's predicament does not negate the fact that the Applicants have incurred costs as a result of one of the Respondent's Committee's decision.

### **Conclusion**


40. In the sum total, I find that the decision of the Respondent's Ethics and Integrity Committee to annul the entire election and consequently the Applicants'

positions is illegal, reeks of procedural impropriety and is unreasonable.

41. I, therefore, grant the Applicants the reliefs sought including quashing the decision of the Respondent's Ethics and Integrity Committee to annul the elections held on 23<sup>rd</sup> April, 2022.

42. Costs are for the Applicants to be taxed in default of agreement. Leave to appeal is granted.

**Delivered at Lusaka this 6<sup>th</sup> day of March, 2023.**

  
.....  
**S.M. WANJELANI**  
**JUDGE**