

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL 2021/KAP/LGET/015  
HOLDEN AT MPOROKOSO  
(CIVIL JURISDICTION)

IN THE MATTER OF: SECTIONS 81, 87, 99(a) AND 100 (1) OF THE ELECTORAL  
PROCESS ACT NUMBER 35 OF 2016

IN THE MATTER OF: RULES 8 (1) (c) AND 9 OF THE LOCAL GOVERNMENT  
ELECTIONS TRIBUNAL RULES OF 2016

IN THE MATTER OF: THE ELECTION OF THE COUNCIL CHAIRPERSON  
COUNCILLOR NSAMA TOWN COUNCIL OF THE  
CHIMBAMILONGA CONSTITUENCY IN THE NSAMA  
DISTRICT OF THE NORTHERN PROVINCE OF REPUBLIC  
OF ZAMBIA HELD ON THE 12<sup>TH</sup> AUGUST, 2021.

BETWEEN:

JOSHUA SIKAPUNDWA

PETITIONER

AND

DAVID SIAME

1<sup>ST</sup> RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2<sup>ND</sup> RESPONDENT

Coram: Before the Honourable M. Mulenga, F. Chibwe and I. Kakanda-Chuula

For the Petitioner: Mr. H. Chongo of Messrs Sinkamba Legal  
Practitioners

For the Respondent: Mr. B. Mwelwa of Messrs Linus E. Eyaa and Partners

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## RULING NO. 2

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Chibwe F, delivered the Ruling of the Tribunal

Cases referred to

1. Manharial Hartji Patel v Surma Stationers Limited Shashikanji Devraj Vaghela Emmanuel Mwansa, (S.C.Z. Judgment No. 12 of 2009
2. Anderson Mazoka -Vs- Levy Patrick Mwanawasa (2005) Z.R. 138 (S.C.)
3. Rose Musonda (Suing As Department Of The Estate Of Stanislaus Chama) V Administrator General 2009/HP/666
4. Passenger Transport Board v Moscrop [1942] A.C. 332
5. Christopher Lubasi Mundia v Sentor Motors Limited (1982) Z.R. 66 (H.C.)

## 1.0 INTRODUCTION

1.1 Those who seek justice must comply with the Orders issued by the Court or a Tribunal if their quest for justice is to be realised. Persistent failure to comply with Court Orders or Orders made by the Tribunal by a party or parties to an action, frustrates the orderly administration of justice. It derails the speedy disposal of matters. In the case of an ordinary Court system, a judge is endowed with enormous powers to enforce Orders through various mechanisms that range from condemning the erring parties in costs, to striking out the matter, dismissal of the matter for want of prosecution and in extreme cases, enforcing contempt provisions against those who spit on the justice system.

1.2 This Ruling is in respect of the Respondent's application to dismiss the Local Government Election Petition for want of jurisdiction. The Tribunal has considered the application by Counsel for the Respondent which has been buttressed by legal authorities as well as the Affidavit in opposition from the Petitioner. We have equally had occasion to consider the legal authorities cited by Counsel for the Petitioner. We wish to state that from the inception of this matter, this Tribunal has been categorical in its Orders for Direction. Regrettably, these Orders for Directions have not been complied with by the Petitioner and now sadly, by his advocate. When the matter came up for hearing on 15<sup>th</sup> September 2021, we enquired from the Petitioner if he had served process on the 2<sup>nd</sup> Respondent but he was unable to give any meaningful reply. He told the Tribunal that his lawyer

based in Lusaka told him that he had served process on the 2<sup>nd</sup> Respondent although could not produce proof of service to the Tribunal. On 19<sup>th</sup> September 2021, when the matter came up for hearing, once again, the Tribunal learnt with sadness that the Petitioner has failed to serve process on the 2<sup>nd</sup> Respondent. We reminded the Petitioner who was still appearing in person then that it was his duty to serve process on Electoral Commission of Zambia (ECZ) the 2<sup>nd</sup> Respondent herein.

- 1.3 Bearing in mind that the Petitioner was appearing in person, the Tribunal advised him that in order to make progress, two options were open to him. We guided that he could either amend his Petition and Affidavit by way of removing the 2<sup>nd</sup> Respondent and deleting or expunging all allegations against the 2<sup>nd</sup> Respondent, the result of which is that the requirement to serve process on the 2<sup>nd</sup> respondent would fall away. Secondly, we guided him that if felt that having 2<sup>nd</sup> Respondent in these proceedings was crucial or highly relevant, then he could contact his lawyer to serve process at ECZ in Lusaka and emphasise to his lawyer to send him proof of service.
- 1.4 At the hearing of 21<sup>st</sup> September 2021, we learnt with sadness again that the Petitioner had neither amended his Petition nor managed to serve the Petition and Affidavit on the 2<sup>nd</sup> Respondent. This time around, the Petitioner came with the excuse that he was not comfortable to proceed without his lawyer.
- 1.5 The Tribunal observed that the said lawyer was not even on record. We were further told by the Petitioner that his lawyer had started off from Lusaka and had reached Kasama and would arrive in Mporokoso being the seat of Tribunal proceedings, the same day. Accordingly, we adjourned the matter to 19<sup>th</sup> September 2021, for commencement of trial.

1.6 On 24<sup>th</sup> September 2021, when the matter came up for commencement of trial, we were faced with yet again, the same dilemma of failure to serve process on the 2<sup>nd</sup> Respondent. Our fears that the matter may drag were obviated when we saw that Counsel from Messrs Sinkamba Legal Practitioners had filed a Notice of Appointment as advocates for the Petitioner and attended Tribunal hearing. The issue of service not having been resolved, we sought clarifications from Counsel for the Petitioner on how he intended to proceed in this matter. Happily, and coincidentally, Counsel ran us through the same two options we had earlier given the Petitioner and settled for the route of amending the process in order to do away with the 2<sup>nd</sup> Respondent. We directed that Counsel amends process in terms agreed upon. We must state that in terms of our Order of 19<sup>th</sup> September 2021 and 21<sup>st</sup> September 2021, we granted the Petitioner's application to amend its Petition and Affidavit verifying facts relied upon in the Petition and misjoin the 2<sup>nd</sup> Respondent from these proceedings.

1.7 Accordingly, we directed that the Petitioner should expunge or delete all allegations against the 2<sup>nd</sup> Respondent in the Petition and accompanying Affidavit without more. It was further directed that the amendment should not touch, revise or vary the allegations against the 1<sup>st</sup> Respondent as doing so would be outside the terms of the application sought by the Petitioner and may further delay the fair trial of this matter. At the expense of repetition, we further ordered and guided that the amendment should not introduce a new cause of action or result in a wholly different Petition in terms of the particulars of the allegations against the 1<sup>st</sup> Respondent. In giving that guidance we were fortified by the case of *Manhariaal Hartji Patel v Surma Stationers Limited Shashikanji Devraj Vaghela Emmanuel Mwansa*, (S.C.Z. JUDGMENT NO 12 of 2009) the Supreme court held as follows:

**Order 18 rule 1 of the High Court Rules provide that the court or a judge may at any stage of the proceedings order any proceedings to be amended, whether the defect or error be that of the party applying top**

amend or not and all such amendments as may be necessary or proper for the purpose of eliminating all statements (112) which may tend to prejudice ,embarrass or delay the fair trial of the suit, and for the purpose of determining, the existing suit, the real question or questions in controversy between the parties, shall be so made. Every order shall be so made upon such terms as to costs, or otherwise as shall seem just.

- 1.8 However, contrary to our Order of 19<sup>th</sup> September, 2021 and 21<sup>st</sup> September, and contrary to the Petitioner's undertaking through his Counsel, the amended Petition and Affidavit in support, introduced new allegations against the 1<sup>st</sup> Respondent. Not only that, the amended Petition and Affidavit revised or varied some allegations. Much more than that, the Affidavit introduced new evidence and new allegations not originally contained in the original Petition and Affidavit. This is very clear from the attachments to the amended Affidavit which is now running into almost 100 pages with various evidentiary attachments thereto.
- 1.9 This prompted Mr. B Mwelwa Counsel for the 1<sup>st</sup> Respondent to raise an objection one of which was that the Original Petition and affidavit not having been signed by the Petitioner or his advocates is defective in material particular and that consequently, we have no jurisdiction to hear the matter. Secondly, Mr. Mwelwa argued that the amendments being outside our Order of 19<sup>th</sup> September 2021 and 21<sup>st</sup> September, it was irregular to proceed to trial without affording him time and opportunity to address his mind to the amendments and possibly react to them. In the alternative, Mr. Mwelwa prayed that the Petition be dismissed for want of prosecution as the Petitioner has persistently failed to take meaningful steps let alone comply with the Orders of this Tribunal.
- 1.10 Although the Petitioner has persistently failed to comply with the Orders of the Tribunal, we nonetheless, exercised our discretion to grant him another chance to comply with our Orders so that we can perhaps make progress in this matter.

Regrettably, when the matter came up for status conference to check if the Order made by the Tribunal on 19<sup>th</sup> September 2021 and 21<sup>st</sup> September respectively, had been complied with, we were informed by the Petitioner himself orally that he was withdrawing the Petition after his lawyer had filed a Notice of Withdrawal from acting for him.

1.11 The petitioner further prayed that the Petition be allowed to be withdrawn without imposing costs on him. The Tribunal guided the Petitioner to make a formal application for the withdrawal of his Petition in accordance with rule 15 of the Local Government Elections Tribunal rules of 2016. The Tribunal adjourned the matter to 25<sup>th</sup> September 2021 for Status Conference and Ruling.

1.12 On 25<sup>th</sup> September 2021, the Tribunal having had sight of the Notice of Intention to Withdraw the Petition filed pursuant to Rule 15 of the Local Government Elections Tribunal Rules of 2016, we granted the application as prayed by the Petitioner. The Tribunal informed the parties that the Petition having been formally withdrawn, the same stands dismissed.

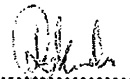
1.13 Petition dismissed.

25 SEP 2021  
L.P. CHIBWE

Hon G. Mulenga  
Chairperson



Hon F. Chibwe  
Member



Hon I. Kakanda-Chuula  
Member