

SCZ Judgment No. 28 of 2014

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IN THE SUPREME COURT FOR ZAMBIA

HOLDEN AT LUSAKA

(Civil Jurisdiction)



APPEALS No. 125, 141 AND 179 /2012

IN THE MATTER OF:

SECTION 72 (1)(a) OF THE CONSTITUTION OF THE
REPUBLIC OF ZAMBIA

AND

IN THE MATTER OF:

SECTION 93 (1) OF THE ELECTORAL ACT NO. 12 OF
2006

BETWEEN:

NEWTON MALWA

APPELLANT

AND

LUCKY MULUSA

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

BETWEEN:

SAUL ZULU

APPELLANT

AND

VICTORIA KALIMA

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

BETWEEN:

DAVIES CHISOPA

APPELLANT

AND

SYDNEY CHISANGA

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

Coram: Mwanamwambwa, Actg D.C.J, Chibomba, Phiri, and Wanki, Muyovwe, J.J.S.,

Lisimba, Kaoma, Ag J.J.S.

On the 3rd day of July 2014

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- For the 1st Appellants:*
1. *Mr. B.C. Mutale, S.C., and with him, Mr. M.K. Kaunda both of Messrs Ellis and Company.*
 2. *Mr. A.D. M. Mumba of Messrs. A.D. Mwansa Mumba & Associates.*
- For the 1st Respondents:*
1. *Mr. E. S. Silwamba, S.C. and with him, Mr. A. J. Jalasi both of Silwamba, Jalasi and Linyama, Legal Practitioners.*
 2. *Mr. M. Chitambala of Messrs Lukona Chambers .*
 3. *Major C.A. Lisita of Messrs Central Chambers.*
- For the 2nd Respondent:* *In house Legal Counsel*

JUDGMENT

Mwanamwambwa, Act. D.C.J., delivered the Ruling of the Court

Cases referred to:

1. Vincent I. Mwale v Eustarkio Kazonga & Another – Appeal No. 123/2012.
2. Christabel Ngimbu v Charles Kakoma & Another Appeal No. 19/2013.

Legislation referred to:

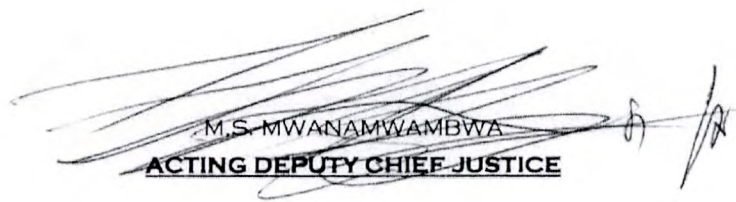
1. Rules of the Supreme Court, 1999. Order 4. Rule 9 (1)

Other Works referred to:


1. Atkin's Court Forms 2nd Edition. Volume 37 (1995 Issue), pages 196 and 211.

On 12th February 2014, we stayed proceedings in these three motions, until after determination of the two earlier motions, involving **Vincent Mwale v Eustarkio Kazonga and Electoral Commission of Zambia (ECZ)**⁽¹⁾ and **Christabel Ngimbu v Charles Kakoma & ECZ**⁽²⁾. In doing so, we clearly contemplated that the result of the two motions in question would, as test actions, in effect determine the three stayed motions. We stated that the two heard motions and the three stayed motions, have some common questions of law and facts. Firstly, all the five motions were made under **Article 72 (1) (a)** of **the Constitution** and **Section 93 (1)** of **the Electoral Act, 2006**. Secondly, all the five motions arise from Election Petitions which were decided against each of the 1st Respondent therein. Thirdly, they are all, inter alia, seeking to bar the Respondents in question, from recontesting by-elections in the Constituencies concerned. We ordered the stay of proceedings on the authorities of **Order 4, Rule 9 (1)** of **the Rules of the Supreme Court 1999** and **Atkin's Court Forms**, 2nd Edition, Volume 37 (1995 Issue), pages 196 and 211.

Today, we have dismissed, for lack of merit, the two motions that were heard on 17th December 2013. Since we regarded those two motions as test actions, we hereby similarly dismiss these three motions, for lack of merit. We order that each party bears its own costs, as these are Constitutional matters.




M.S. MWANAMWAMBWA
ACTING DEPUTY CHIEF JUSTICE



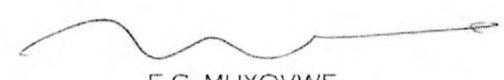
H. CHIBOMBA
SUPREME COURT JUDGE



G.S. PHIRI
SUPREME COURT JUDGE



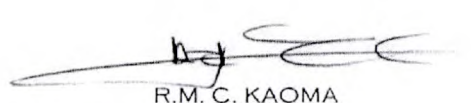
M.E. WANKI
SUPREME COURT JUDGE



E.C. MUYOVWE
SUPREME COURT JUDGE



M. LISIMBA
ACTG SUPREME COURT JUDGE



R.M. C. KAOMA
ACTG SUPREME COURT JUDGE