

**IN THE HIGH COURT FOR ZAMBIA  
2013/HP/1159  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

**IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA, CHAPTER 1, and  
VOLUME 1 OF THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: ORDER 53 OF THE RULES OF THE SUPREME COURT 1965  
(RSC), WHITE BOOK, (1999 EDITION) VOLUME 1 AND  
VOLUME 2**

**AND IN THE MATTER OF: ARTICLES 64 AND 65, OF THE CONSTITUTION OF  
ZAMBIA, CHAPTER 1 VOLUME 1 OF THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: SECTION 22, 104 (6), 104 (7), AND 104 (8) OF THE  
ELECTORAL ACT NO. 12 OF 2006**

**AND IN THE MATTER OF: SECTION 12 OF THE STATE PROCEEDINGS ACT, CHAPTER  
71, VOLUME 6, OF THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF: A PURPORTED DECISION OF THE JUDICIARY OF THE  
REPUBLIC OF ZAMBIA ISSUED BY THE PUBLIC RELATIONS  
OFFICER OF THE JUDICIARY MADE ON THE 8<sup>TH</sup> DAY OF  
AUGUST, 2013 BY WAY OF PRESS RELEASE DATED THE 8<sup>TH</sup>  
DAY OF AUGUST, 2013.**

**AND IN THE MATTER OF: A PURPORTED DECISION OF THE ACTING REGISTRAR OF  
THE HIGH COURT MADE ON THE 9<sup>TH</sup> DAY OF AUGUST,  
2013 CONTAINED IN A LETTER ADDRESSED TO THE  
DIRECTOR OF THE 2<sup>ND</sup> RESPONDENT DATED THE 9<sup>TH</sup> DAY  
OF AUGUST, 2013.**

**AND IN THE MATTER OF: A DECISION OF THE DIRECTOR OF ELECTIONS OF THE  
ELECTORAL COMMISSION OF ZAMBIA DATED THE 9<sup>TH</sup>  
DAY OF AUGUST, 2013 TO POSTPONE THE FILING OF  
NOMINATIONS IN THE BY ELECTIONS FOR PETAUKE  
CENTRAL CONSTITUENCY NO. 55, MALAMBO**

CONSTITUENCY NO. 51 AND MULOBEZI CONSTITUENCY NO. 148.

AND IN THE MATTER OF:

A DECISION OF THE DIRECTOR OF ELECTIONS OF THE ELECTORAL COMMISSION OF ZAMBIA DATED THE 10<sup>TH</sup> DAY OF AUGUST, 2013 PURPORTING TO DISQUALIFY THE 1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> APPLICANTS FROM FILING THEIR RESPECTIVE NOMINATIONS IN THE BY ELECTIONS TO BE HELD IN PETAUKE CENTRAL CONSTITUENCY NO. 55, MALAMBO CONSTITUENCY NO. 51 AND MULOBEZI CONSTITUENCY NO. 148 RESEPECTIVELY TO BE HELD ON 5<sup>TH</sup> SEPTEMBER, 2013.

BETWEEN:

DORA SILIYA (FEMME SOLE)

1<sup>ST</sup> APPLICANT

MAXWELL MOSES BOMA MWALE (MALE)

2<sup>ND</sup> APPLICANT

HASTINGS SILILO (MALE)

3<sup>RD</sup> APPLICANT

AND

THE ATTORNEY GENERAL

1<sup>ST</sup> RESPONDENT

THE ELECTORAL COMMISSION OF ZAMBIA

2<sup>ND</sup> RESPONDENT

WYNTER MUNACAAMBWA KABIMBA (to be joined to the proceedings in his capacity as Secretary General of the Patriotic Front)

INTERESTED PARTY

Before the Honourable Mrs. Justice M. S. Mulenga on the 23<sup>rd</sup> day of August 2013 in Chambers at 14:30 hours.

For the Applicants:

Mr. Jack Mwiimbu of Mwiimbu, Muleza & Company.

Mrs. Martha Mushipe and Mr. Keith Mweemba of Mushipe and Associates.

Mr. Eric Silwamba SC, Mr. J. Jalasi and Mr. L. Linyama of Eric Silwamba, Jalasi and Linyama Legal Practitioners.

Mr. Paul G. Katupisha of Milner Katolo and Associates

Mr. S. Lungu and Mr. A.G. Shonga SC - Messrs Shamwana and Company.

Mr. Gilbert Phiri of PNP Advocates.

For the 1<sup>st</sup> Respondent:

Mr M Malila SC Attorney General

Mrs M Kombe - Chief State Advocate

For the 2<sup>nd</sup> Respondent:

Mr. Eric M. Kamwi Legal Counsel

Mrs. Mulemba Mulenga in-house Counsel for the Respondent.

For the interested party:

Dr. J. Mulwila of Ituna Partners

Mr. A. D. M. Mumba of A. D. Mwansa & Company

Mr. A. Kasolo of MSK Advocates

Mr. O. B. Mubanga of Chilupe and Permanent Chambers

Mr. B. Soko and Mr A. Banda of Ferd Jere and Company

Mr. A. Mwansa of AMC Legal Practitioners

Mr. K. Kaunda - Messrs Ellis and Company

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## **RULING**

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**Cases cited:**

1. Attorney General, Movement for Multi-party Democracy v Akashambatwa Mbikusita Lewanika and Others Fabian Kasonde, John Mubanga, Chilufya Kapwepwe and Katongo Maine (1994) ZR. 164
2. Mike Hamusonde Mweemba v Obote Kasongo, Zambia State Insurance (2006) ZR 101
3. Abel Mulenga and others v Chikumbi and others (2006)ZR 33
4. Dean Mung'omba and others v Peter Machungwa and Others (2003) ZR 17.
5. Zambia Wildlife Authority and Others v Muteeta Community Resources Board Development C-operative Society (2009) ZR 159
6. R.v. Inland Revenue Commissioners, Ex-parte National Federation of Self Employed and small business Limited [1983] A C 617.
7. Arthur Lubinda Wina and other v the Attorney General (1990-92) ZR 95
8. Simbeye Enterprise Limited and others v Ibrahim Yousuf Supreme Court Judgment No. 36 of 2000
9. Ludwig Sondashi v Miyanda SCZ Judgment No. 1 of 1995
10. Shilling Bob Zinka v Attorney General (1990-92) ZR 73
11. Gouriet v Union of Post Office Workers [1982] A C 617

**Legislation referred to:**

- .1 High Court Act Cap 27, Order 14 r 5 (1)
2. Rules of the Supreme Court 1999 Edition, Orders 15 r 6 (2) and (3) and Order 53

This Ruling is on the application for non-joinder by the Interested Party made pursuant to Order 14 r 5(1) of the High Court Rules Cap 27 and Order 15 r 6(2) and (3) of the Rules of the Supreme Court (RSC) 1999 Edition. An affidavit was filed by Wynter Munacaambwa Kabimba as the Secretary General of the Patriotic Front wherein he stated that his party had an interest in the outcome of the case which would affect it and would therefore like to be joined as a party to the proceedings. He further stated that the prayers by the Applicants if granted would affect the Patriotic Front.

At the hearing, the Interested Party's counsels relied on the case of Attorney General, Movement for Multi-Party Democracy V Akashambatwa Mbikusita Lewanika and Others (1994) ZR 164 and Mike Hamusonde Mweemba V Obote Kasongo, Zambia State Insurance (2006) ZR 101 where it was held that:

***“A court can order a joinder if it appears to the Court or judge that all persons who may be entitled to or claim some share or interest in the subject matter of suit or who may be likely to be affected by the result require to be joined.”***

Based on the above cases, it was submitted that in Zambia political parties sponsor candidates and as such have an interest in cases of this nature. Further, the case of Abel Mulenga and others Vs Chikumbi and Others (2006) ZR 33 was cited as holding that ***“in order for a party to be joined to an action, the party ought to show that they have an interest in the subject matter of the action.”*** It was submitted that the affidavit showed that Patriotic Front has an interest since it had petitioned the three constituencies under contention.

It was also argued that section 108 of the Electoral Act no. 12 of 2006 as read with Article 67 of the Constitution provide for the holding of by-elections within a period of 90 days, and as such it is the interest of Patriotic Front that the law is enforced and the rights of the party are taken care of since they intend to sponsor candidates to contest for the said constituencies.

The Applicants' counsels responded that the authorities cited by the Interested Party are not judicial review cases but ordinary matters between parties except for one case. With Judicial review proceedings, a party is not at liberty to invoke any other provision except Order 53 of the Rules of the Supreme Court (RSC). That Order 14 High Court Rules which the Interested Party has relied on, is a wrong provision of the law in judicial review cases. Section 10 of the High court provides that in cases where our laws do not provide for procedure, we should seek refuge in the provisions of the Rules of the Supreme Court (RSC) 1999 Edition. A party seeking to join judicial review proceedings must rely on Order 53 RSC and not any other provisions of the law.

The Supreme Court authority of Dean Mung'omba and Others Vs Peter Machungwa and Others (2003) ZR 17 was cited as stating that:

***“It is accepted that there is no rule under the High Court Rules under which judicial review proceedings can be instituted and conducted and by virtue of section 10 of the High Court Act, Cap 27, the court is guided as to procedure and practice to be adopted. Having accepted that there is no practice and procedure prescribed under our Rules, we follow the practice and procedure for the time being observed in England in the High Court of Justice. The practice and procedure in England is provided for in Order 53 of the Rules of the Supreme Court (RSC). Order 53 is very detailed. In it one will find the law as on what basis judicial review is founded; the parties; how to seek the remedies and what remedies are available. Under the parties, care is taken not only as to who can initially commence the proceedings, but***

*also who can possibly join or be joined. The Order further provides the sort and form of evidence required at the hearing.*

*Once it is accepted that our Rules do not provide for the practice and procedure on judicial review and we adopt the practice and procedure followed in England, our Rules for the purposes of judicial review are completely discarded and there is strict following of the procedure and practice in Order 53 of RSC. It will be noted from the learned editors of the White Book (RSC), that Order 53 created 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 and other persons or bodies which perform public duties or functions. The procedure of judicial review enables one seeking to challenge an administrative act or omission to apply to the High Court for one of the prerogative orders of mandamus, certiorari or prohibition, or in appropriate circumstances to declaration, injunction or damages. As it is a comprehensive code of procedure on judicial review, our Orders 14 and 18 High Court Rules are inapplicable. These Orders are only relevant to process begun under our rules and when applicable.”*

It was thus submitted that the application for joinder must be dismissed on the basis of invoking wrong orders instead of Order 53 RSC. The Applicants' counsels also cited the case of **Zambia Wildlife Authority and Others Vs Muteeta Community Resources Board Development Co-operative Society (2009) ZR 159** as holding that the Rules of the Supreme Court Order 53 must be strictly adhered to. Further that a party intending

on joining must state if they are opposing, supporting or coming as friends of the court. That the Intended Party's affidavit did not show the role that Patriotic Front will play in the proceedings. That on this ground alone of invoking wrong orders, the application for non-joinder should be dismissed with costs.

It was further submitted that the Secretary General of Patriotic Front cannot be allowed to be joined just because his party petitioned the seats and expended human and financial resources in the endeavour. That the affidavit did not show sufficient interest to warrant him to be a party to the proceedings as it failed to meet the *locus standi* test which requires sufficient interest as outlined in the case of **R V. Inland Revenue Commissioners, Ex-parte National federation of Self Employed and Small businesses Limited [1982] AC 617**. *Locus standi* is the ability of the party to demonstrate to the Court sufficient connection to and harm from the law and action challenged to support that party's participation in the case. That the Patriotic Front through its Secretary General has failed to show the harm they would suffer as a result of the judicial review application. Human and financial resources cannot amount to sufficient interest in the eyes of the law. Whether the application succeeds or fails, the candidates of Patriotic Front will still be allowed to file in nominations if they so wished.

Another case relied upon on the question of sufficient interest was that of **Abel Mulenga and Others vs Chikumbi and Others** cited above, where it was held that, ***“in order for the appellant to be joined as a party in the action, the appellants ought to have shown that they have an interest***



***in the subject matter of the action and that the mere fact that the appellants may have been affected by the decision of the Court below does not clothe them with sufficient interest or locus standi entitling them to be joined in the dispute.”***

The case of Arthur Lubinda Wina and Others Vs The Attorney General (1990-92) ZR 95 was also cited as stating that ***“to be “legally aggrieved” a person must be not merely dissatisfied with or even prejudiced by an action or decision. He must also have been deprived of or refused something to which he was legally entitled. He must be able to point to some ‘encroachment or vested rights.’”***

The Applicants’ counsels further argued that Patriotic Front had neither demonstrated what harm it would suffer nor shown what legal right they had which would be violated if not joined to the proceedings. In addition that paragraph 53/14/24 RSC states that, ***“sufficient interest is the overriding and governing principle with regard to such application, the overriding rule governing the standing of the applicant to apply for judicial review is that the Court must consider that he has a sufficient interest in the matter to which the application relates. If the applicant has a direct personal interest in the relief which he is seeking then he is likely to be included in the proceedings.”*** That therefore allowing the Interested Party to be joined to the proceedings would open a pandora box, in that the other political parties will also demand that they too be joined to the proceedings. They prayed that the Interested Party’s application be dismissed on the basis of lack of sufficient interest with costs.

The Interested Party's counsels replied by restating that the affidavit filed by the Secretary General of Patriotic Front had demonstrated sufficient interest which is covered under paragraph 4 of the affidavit. The Supreme Court case of **Simbeye Enterprise Ltd and Others Vs Ibrahim Yousuf SCZ Judgment No. 36 of 2000** case was cited as holding that, ***“it has been a practice of the Supreme Court to join any person to the appeal if the decision of the Court would affect that person or his interest. The purpose of the rule is to bring all parties to disputes relating to one subject matter before the court at the same time so that disputes may be determined without the delay, inconvenience and expense of separate actions and trials.”***

Further, that the case of **Ludwig Sondashi v Miyanda SCZ Judgment No. 1 of 1995** does not support the contention that there must be strict adherence to Order 53 RSC as the said judgment was not upheld. It was submitted further that Order 53 RSC has no specific provision that relate to non- joinder of the party, hence the reason why the application was made pursuant to Order 14 of the High Court Rules.

The Interested Party's counsels added that sufficient interest had been demonstrated and the Patriotic Front should not be denied the application just because the Secretary General wears two jackets, that of Minister of Justice and Secretary General of the Patriotic Front since political parties fall under the Society's Act. They prayed that the application for non-joinder be granted on that basis.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not submit on this application by the Interested Party.

I have considered the submissions by both parties. The starting point is section 10 of the High Court Act Cap 27 which provides that where our rules are silent, recourse should be made to the provisions of the Rules of the Supreme Court (RSC) White Book 1999 Edition. Our High Court Rules do not provide for the practice and procedure with regard to judicial review and thus recourse has to be had to Order 53 of the Rules of the Supreme Court 1999 Edition.

The Supreme Court had occasion to canvass the issue of joinder of party in judicial review proceedings in the case of **Dean Namulya Mung'omba and Others v Peter Machungwa and Others** cited above by the Applicants' counsels where it was held that by virtue of section 10 of the High Court Act, the practice and procedure regarding judicial review is entirely governed by Order 53 RSC. That Order 53 RSC is very detailed and thus **"our rules for purposes of judicial review are completely discarded."** The Supreme Court went further to consider the issue of joinder of parties and amendments under Orders 14 and 18 of the High Court Rules and stated at pages 20 and 21 of the said judgment that:

***"As it (Order 53) is a comprehensive code of procedure on judicial review, our Orders 14 and 18 High Court Rules are inapplicable. These orders are only relevant to process began under our rules and when applicable. ....Where a person feels an administrative act or omission affects him, does not***

***initiate the judicial proceedings, he may apply to the court to be heard on the hearing of the motion or summons as provided for under Order 53 rule 9. Here again it is the person who feels he may be affected by the decision that moves the court to be joined to the proceedings after showing sufficient interest in the matter;....." (emphasis mine)***

It is apparent from this Supreme Court authority that the application for non-joinder by the Interested Party made pursuant to Order 14 of the High Court Rules and Order 15 RSC is procedurally wrong and liable to be dismissed on this technicality. In the same vein, most of the authorities cited in support of the Interested Party's application based on Order 14 High Court Rules are not applicable as they do not relate to judicial review matters but matters commenced by other modes to which the High Court Rules apply. Order 53 Rule 9(1) provides for joinder of parties to judicial review proceedings contrary to the submission by the Interested Party's counsels.

It is pertinent for me to state that even when this application is considered under Order 14 High Court Rules and Order 15 Rule 6 (2) and (3) RSC, the application would not meet the required threshold particularly as outlined in sub-rule 3 which requires that one must either show his interest in the matter in dispute or state the question or issue to be determined between him and any party to the cause or matter. None of these conditions has been adequately satisfied by the Interested Party as can be seen from his affidavit. The submissions by the Applicants' counsels are thus entirely valid that the application as it stands ought to be dismissed for having been

brought pursuant to orders that are not applicable to judicial review proceedings or Order 53 RSC as guided by the Supreme Court decision cited above, which decision is binding on this court.

Despite this, I have taken the liberty to consider whether the Interested Party has satisfied the requirement for sufficient interest as provided under Order 53 RSC. This is after having considered the guidance in **Shilling Bob Zinka v Attorney General (1990-92) ZR 73 (SC)** where the President of the Republic of Zambia had exercised power under a wrong Act or legislation and it was held *inter alia* :

**“That the reference to the Emergency Powers Act had been wrong. However, the President could lawfully have exercised the same power under another statutory provision. In the circumstances, as the power he had exercised has been traceable to a legitimate source, the fact that he purportedly exercised that power under a wrong source did not invalidate his action.”**

It is hence my considered view that in order to do justice and determine this application on its merits, there is need to go beyond the technicality in light of the fact that the application could have been validly brought under Order 53 RSC which is the legitimate source and can thus be still considered under the same.

Order 53 RSC in paragraph 53/14/24 deals with the question of sufficient interest for purposes of judicial review. This primarily relates to principal

applicants for judicial review but is clearly also applicable to any party that applies to join judicial review proceedings as the Interested Party in this case. This requires that an applicant must have the requisite *locus standi*. Paragraph 53/14/24 states in part that:

***“the question of what is a “sufficient interest in the matter to which the application relates” appears to be a mixed question of fact and law; a question of fact and degree and the relationship between the applicant and the matter to which the application relates having regard to all the circumstances of the case (cited with approval by Lord Roskill in R v Inland Revenue Commissioners, ex p. National Federation of Self-Employed and Small Businesses Ltd [1982] A C 617,659 [1981] 2 All ER 93 at 107....”***

This issue of sufficient interest is what therefore falls to be determined in this application and was rightly the focus of the submissions by the parties. The respective submissions by the parties are as highlighted above. The counsels for the Interested Party argued that the affidavit sworn by Wynter Munacaambwa Kabimba in his capacity as Secretary General of the Patriotic Front shows the *locus standi* or interest as the political party that is likely to be affected by the outcome of this case. Particular reliance was made on paragraphs 3 and 4 of the affidavit in support which state as follows:

***“3.That the Patriotic Front through its candidates had petitioned several parliamentary seats which included Malambo, Petauke Central and Mulobezi Constituencies.***

**4. That as a result of the nullification of the said seats by the Supreme Court, the Patriotic Front intends to contest the said seats and has already expended considerable human and financial resources in preparation of the same.”**

The gist of the submissions, which have already been outlined above and need not be repeated, is that the Patriotic Front as a party that sponsored candidates who petitioned the seats in issue will be affected if the Court makes a decision that will change the status obtaining on the ground and that the Patriotic Front is interested to ensure that the Constitution and the Electoral Act were enforced on the holding of the by-elections within the prescribed time frames hence the interest of the party and its candidates.

The Applicants' counsels on the other hand responded that the Interested Party was required to show whether he intended to oppose, support or join as *amicus* in these proceedings. That the reason given that the Patriotic Front has expended considerable human and financial resources as well as petitioned the Applicants does not meet the test of sufficient interest or *locus standi* which is to demonstrate the harm that would be occasioned to the party by the judicial review application. The cases of **Abel Mulenga and Others v Mabvuto Chikumbi and Others** and **Arthur Lubinda Wina and Others v Attorney General** were cited in support that the mere fact that one was affected by the decision of the Court did not clothe one with sufficient interest in the absence of vested legal rights. It was added that the Interested Party was therefore merely a busybody and mischief maker in these proceedings.

Judicial review is a procedure by which the High Court exercises supervisory jurisdiction over the proceedings and decisions of tribunals or bodies performing public duties or functions. It is not concerned with the merits of the decisions, but whether the exercise of power has been done within the confines of the law or whether the public body has exceeded its jurisdiction. It is therefore not an ordinary action between private individuals or between an individual and an agency of the state.

What I have to determine with regard to the Interested Party as outlined in the case of **Gouriet v Union of Post Office Workers [1982] A C 617 at 629, 631** is the question of *locus standi* which is one of discretion and depends upon weighing of all the circumstances of the case. This means that the question of *locus standi* and sufficient interest is one that has to be objectively determined considering the subject matter at hand. The terms *locus standi* and sufficient interest are usually used interchangeably in judicial review proceedings and the test is basically the same involving a mixture of law and fact.

I must mention that although it is not in dispute that political parties generally sponsor their candidates in elections, in the instances regarding the Applicants, the Interested Party was not a party in the subject election petitions and cannot be clothed with the interest in the same at this stage. This factor also distinguishes this application from that of the 1<sup>st</sup> and 2<sup>nd</sup> Appellants in the above cited case of **Dean Namulya Mung'omba and Others v Peter Machungwa and Others** who were rightly joined as interested parties as the persons who had initiated the complaints which



led to the Tribunal's decision that was then being challenged through judicial review.

The substantive application for judicial review by the Applicants concerns the decision of the Director of Elections of the 2<sup>nd</sup> Respondent disqualifying the Applicants from filing nominations for the respective forthcoming by-elections. The disqualification is premised on the purported report of the Acting Registrar of the High Court based on the Supreme Court Judgments nullifying the Applicants' elections on the grounds of illegal and corrupt practices. The main relief sought is for an order of certiorari to quash the said decision on the grounds of illegality, procedural impropriety and unreasonableness.

Considering paragraphs 3 and 4 of the Interested Party's affidavit, the same do not show how the decisions or proceedings in issue affect the Interested Party or the political party he represents. The said paragraphs equally do not show how the Interested Party would be adversely or significantly affected by any decision of this court on the issues raised by the Applicants. The decision which is the subject of the current judicial review proceedings directly relate to the three Applicants. It cannot reasonably be said to affect the Interested Party except for mere inconvenience due to the temporary delay of the scheduled by-elections. This delay generally affects all other interested parties who wish to contest the by-elections but does not do so in a material particular. Hence this does not amount to grave or serious prejudice giving rise to sufficient interest. I should add that the nature of the reliefs sought in the proceedings is an important factor to also consider in determining whether the person

applying to be joined has demonstrated sufficient interest. In this case, I find that the reliefs sought have no direct effect or material bearing on the Interested Party.

The case of **Abel Mulenga and Others v Mabvuto Chikumbi and Others** cited above is also very instructive on this aspect when it was held that:

***“In order for the applicant to be joined as a party in the action, the Applicant ought to have shown that they have an interest in the subject matter of the action and that the mere fact that the applicants may have been affected by the decision of the Court below does not clothe them with sufficient interest or locus standi entitling them to be joined in the dispute.”***

My perception of paragraph 53/14/24 RSC is that for the Interested Party to have *locus standi* or demonstrate sufficient interest, he must show that he would be affected by the Court's decision in a concrete sense and not an abstract one. It is thus not for the Court to speculate or second guess what a party must squarely and appropriately lay on record for the Court to make an informed decision. The reasons advanced in the Interested Party's affidavit do not show sufficient interest to warrant the joining of the Interested Party to the current proceedings.

I wish to comment that in the current proceedings, the Attorney General is a party being the 1<sup>st</sup> Respondent and he is generally the custodian of public interest and considerations in such matters. The public interest is therefore well taken care of in this case.

Having found that the Interested Party has not demonstrated sufficient interest as required, I hereby decline to grant the application for non-joinder to these current proceedings and accordingly dismiss the application for being misconceived and lacking merit.

Costs are for the Applicants to be taxed in default of agreement.

Leave to appeal granted.

***Dated .....day of .....2013.***

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**M. S. MULENGA  
HIGH COURT JUDGE**