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2014

SCZ Judgment No. 29 of

**IN THE SUPREME COURT OF ZAMBIA
19/2013
HOLDEN AT LUSAKA**

Appeal No.

(CONSTITUTIONAL JURISDICTION)

**IN THE MATTER OF: ARTICLE 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**

AND

**IN THE MATTER OF: ZAMBEZI WEST CONSTITUENCY ELECTIONS
HELD IN ZAMBIA ON 20TH SEPTEMBER, 2011.**

BETWEEN:

CHRISTABEL NGIMBU

APPLICANT

AND

**KAKOMA CHARLES WAHUNA
ELECTORAL COMMISSION OF ZAMBIA**

**1ST RESPONDENT
2ND RESPONDENT**

Coram: Mwanamwambwa, Chibomba, Phiri, Wanki, Muyovwe,
Hamaundu, JJJJJJS and Lengalenga, Ag. JS.
On 17th December, 2013 and 3rd July, 2014.

For the Appellant:

- 1. Mr. B. C. Mutale, SC.**
- 2. Ms Mukuka of
Messrs Ellis and Company**

3. **Mr. A. D. Mumba
Of Messrs A. D. Mwansa
Mumba & Associates.** (669)

For the 1st Respondent:

1. **Mr. J. Mwimbu of
Messrs Muleza Mwimbu and
Company**
2. **Ms. M. Mushipe and Mr. K.
Mweemba of Messrs Mushipe
and Associates.**
3. **Mr. G. Phiri of
Messrs PNP Advocates**

For the 2nd Respondent:

**Mrs. Lungu of the
Electoral Commission of Zambia.**

JUDGMENT

Phiri, JS, delivered the Judgment of the Court

Cases referred to:

1. **Godfrey Miyanda vs. The High Court, (1984) ZR 62.**
2. **Meryiel Gail Melrose Marshall vs. Rory Mcdougall
(1988-89) ZR 206.**
3. **Paul John Firmino Lusaka vs. John Cheelo (1979) ZR
214.**
4. **Michael Mabenga vs. Sikota Wina and two Others
(2003) ZR 110.**
5. **Chibote Ltd. Mazembe Tractor Company Ltd.
Minestone (Z) Limited, Minestone Estates Limited vs.
Meridien BIAO Bank (In Liquidation) (2003) ZR 76**

6. **Godfrey Miyanda vs. The Attorney-General (1986) ZR 58 at page 61.**

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7. **Caltex Oil Zambia Ltd. vs. Teresa Transport Limited (2002) ZR 97.**

Legislation referred to:

1. **Electoral Act No. 12 of 2006.**

2. **Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia.**

When we heard this case we dealt with two Motions together; i.e., the Applicant's Motion filed pursuant to **Order 48(5) of the Supreme Court Rules Chapter 25 of the Laws of Zambia**, and the first Respondent's Motion to raise preliminary points of law, pursuant to **Order 33 Rule 3 of the Rules of the Supreme Court, (White Book 1999 edition)**. We promised to render a single Judgment, and this we now do. We propose to start with the Motion to raise preliminary issues.

The Motion was filed on behalf of the 1st Respondent who listed two grounds, as follows:

1. Whether this application is not incompetent or improperly before Court for having been brought under a wrong Section of the law (*Section 9 of the Supreme Court of*

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***Zambia Act Chapter 25 of the Laws of Zambia*) which is not supportive of the subject application.**

2. Whether this Court has jurisdiction to re-open an appeal and augment it with aspects that were neither in contention in the Court below, nor canvassed in the Applicant's grounds of appeal.

There is an affidavit in support of this Motion filed by Chad Himonga Muleza, advocate of the High Court. This affidavit mentions, inter alia, that the Applicant, filed a Notice of Motion in which she seeks this Court's guidance as to whether the first Respondent is eligible to contest any Parliamentary Elections that will be held in the next five years or whether the High Court, the second Respondent, or the Director of Public Prosecutions ought

to take any steps in view of the findings by the Court that the first Respondent is guilty of having committed corrupt and illegal practices in connection with the nullified elections. In addition, the Applicant desires that this Court interprets the ***Electoral Act No. 12 of 2006***. The affidavit of Muleza also mentions that, it is not

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only imperative but important that this Court decides whether the Motion before it has been moved using an appropriate Section of the law, and that this Court has no jurisdiction to reopen an appeal and argue it with aspects that were not canvassed in the Applicant's grounds of appeal.

Skeleton arguments were filed in support of the first Respondent's Motion, and Mr. A. D. Mumba, co-advocate for the Applicant augmented the skeleton arguments with extensive oral submissions which dwelt on the application of ***Section 9 of the Supreme Court of Zambia Act***, which deals with execution of Judgments of the Supreme Court; and it reads as follows:

“9. The process of the Court shall run throughout Zambia and any judgment of the Court shall be executed and enforced in like manner as if it were a judgment of the High Court”.

Mr. Mumba’s argument was to the effect that the judgment of this Court delivered on the 10th of October, 2013 ought to be executed and enforced in like manner as if it were a judgment of the High Court that tried the Election Petition.

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We must observe, from the outset, that Mr. Mumba’s arguments presented us with an awkward position because at the commencement of the hearing, Mr. Bonaventure Mutale, SC, and lead Counsel, acting on behalf of the Applicant, plainly and unequivocally stated to us that the citation of **Section 9 of the Supreme Court of Zambia Act**, was an error on their part, and not intended to be relied upon in support of the Applicant’s Motion.

We note that indeed, whereas the front cover of the record of this application indicates that the Applicant’s Motion is made

pursuant to **Section 9 of the Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia**, the actual Notice of Motion at pages 5 and 6 of the record clearly indicates that same was filed on behalf of the Applicant pursuant to **Rule 48(5) of the Supreme Court Rules**.

We take the word of State Counsel Mutale in this regard, and formally dismiss ground 1 of the 1st Respondent's Motion to raise preliminary points of law, and we adjudge that the Applicant's main Motion is properly before this Court under **Rule 48(5) of the**

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Supreme Court Rules, and that reference to **Section 9 of the Supreme Court of Zambia Act** which is on the front title cover of the record of the main Motion was a mistake.

Ground 2 of the 1st Respondent's Motion to raise preliminary points of law was; whether this Court has jurisdiction to re-open an appeal and augment it with aspects that were neither in contention in the Court below, nor canvassed in the Applicant's

grounds of appeal. This ground was not contested, and it is valid. However, we do not see much value in it, because there has been no appeal that was previously before us, that has been re-opened. This point is therefore irrelevant to the present application. Our position has always been that this Court has no jurisdiction to review its judgments, or to set aside and re-open an appeal; and that if it were so, there would be no finality in dealing with appeals. See ***Muyawa Liuwa vs. Judicial Complaints Authority, Attorney-General SCZ 6 of 2011.***

In the case of ***Chibote Limited, Mazembe Tractor Company Limited, Minestone (Z) Limited, Minestone Estates Limited vs.***

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Meridien BIAO Bank (Z) Ltd. (In Liquidation)⁽⁵⁾, we went further as follows:

“An appeal determined by the Supreme Court will only be reopened where a party, through no fault of its own has been subjected to an unfair procedure and will not be varied or rescinded merely because a decision is subsequently thought to be wrong”.

For the foregoing reasons, we find no merit in the preliminary issues.

Coming to the main Motion, the Applicant's Motion seeks the determination of the following questions:

“Whether or not on the construction of Sections 2(1) (3), 22, 104 and 109(2) and (3) of the Electoral Act, No. 12 of 2006, read with Section 9 of the Supreme Court Act, Chapter 25 of the Laws of Zambia, and in view of the findings by the Supreme Court that the first Respondent is guilty of having committed corrupt and illegal practices in connection with the Parliamentary Elections held on the 20th of September, 2011 in respect of Zambezi West Constituency;

(i) It is incumbent on the High Court to make a report to the second Respondent and the Director of Public Prosecutions on the finding that the first Respondent committed corrupt and illegal practices in connection with the Parliamentary Elections held in respect of Zambezi West Constituency on 20th September, 2011.

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(ii) The first Respondent may contest any Parliamentary Election in Zambia in the period of five years from the submission to the second Respondent and the Director of Public Prosecutions of a report prepared by the High Court; and

(iii) It is incumbent on the 2nd Respondent or the National Prosecutions Authority to prosecute the first Respondent for corrupt practices under the Electoral Act.”

There is an affidavit in support of this Motion, sworn by Dean Mwansa Mumba, advocate. This affidavit essentially gives a summary of the facts and the background of this Motion. In summary, the affidavit mentions that the Applicant appealed to this Court from a judgment of the High Court which dismissed her petition against the election of the 1st Respondent as Member of Parliament for Zambezi West Constituency in the North-Western Province; that on the 10th of October, 2013, this Court delivered a judgment in which the 1st Respondent was found guilty of corruption and illegal practices and nullified his election.

It is also mentioned that it is unclear whether or not the 1st Respondent is eligible to contest any Parliamentary Election to be held in the next five years, or whether the High Court, the 2nd

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Respondent, the Director of Public Prosecutions, and/or the National Prosecutions Authority ought to take any steps in view of the findings by this Court that the 1st Respondent is guilty of having committed corrupt practices in connection with the nullified election. The deponent prays that we interpret the ***Electoral Act No. 12 of 2006*** in a manner that gives effect to the guarantees and responsibilities contained in several pieces of legislation.

Both parties filed written Heads of Argument which they augmented with oral submissions. The gist of the Applicant's arguments is that though the Court found one Kakoma Charles Wahuna guilty of having committed corrupt and illegal practices in connection with the said Parliamentary Elections held on the 20th September, 2011, the Court did not consider and effectively interpret the law as provided under ***Section 9 of the Supreme Court of Zambia Act, Chapter 25, Sections 2(1) and (3), 22(b), 104(6) and 109 of the Electoral Act, No. 12 of 2006, Articles 65(6), 67 and 71(2) (b) and (f) of the Constitution of Zambia.***

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After reciting the foregoing provisions of the Supreme Court Act, the Electoral Act, and the Constitution of Zambia, Mr. Mumba submitted on behalf of the Applicant that on the interpretation of those provisions, and as read with **Section 9 of the Supreme Court of Zambia Act**, and in view of the nullification by the Supreme Court, of the 1st Respondent's election to the National Assembly on account of corrupt practices, it is a statutory obligation of the High Court to prepare a report on the 1st Respondent's corrupt practices for onward transmission to the 2nd Respondent and the Director of Public Prosecutions notwithstanding that the finding of corrupt practices was made by the Supreme Court and not the High Court. Counsel submitted that the High Court is under an obligation, by the word "**SHALL**", to render a Report relating to any person whose election has been nullified upon being found guilty of any corrupt or illegal practices in the course of that election.

Mr. Mumba further argued that in the event that the Supreme Court of Zambia through the High Court of Zambia fails to perform

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their obligatory functions of reporting any person who has been found guilty of having committed a corrupt practice, and/or an illegal practice at the trial or determination of an Election Petition, it would be an affront to the provisions of the **Constitution of Zambia**, the **Electoral Act** and the **Electoral (Code of Conduct) Regulations** respectively. That our Judgment delivered on the 10th October, 2013 ought to be executed and enforced in like manner as if it were a judgment of the High Court that tried the Election Petition. It was submitted that it is necessary and mandatory under **Section 104(6) and (7) of the Electoral Act** that the High Court of Zambia submits a report to both the Electoral Commission of Zambia and the Director of Public Prosecutions; which report will give effect to the guarantees and responsibilities contained in the **Constitution of**

Zambia pursuant to **Section 2(3) of the Electoral Act**, which states as follows:

“2(3). For the avoidance of doubt, every person interpreting this Act and any regulations made under it shall:

(a) Do so in a manner that gives effect to the guarantees and responsibilities contained in the Constitution;

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(b) Take into account any appropriate Code”.

It was stressed that the intention of Parliament; reflected in the **Electoral (Code of Conduct) Regulations, 2011 (S.I. No. 52 of 2011** and **Article 71 Clause 2(b) of the Constitution of Zambia**, as read with **Article 65**; is to ensure that persons who aspire to the office of Member of the National Assembly of Zambia ought to be those whose election in the preceding election had not been nullified for having committed any corrupt practices, and/or illegal practices.

It was also argued that it was absolutely unnecessary for the Court to give an opportunity to Kakoma Charles Wahuna to show cause why his name and his particulars should not be so stated in

the Report required to be submitted by the High Court, to the Electoral Commission of Zambia and the Director of Public Prosecutions on the following grounds:

“1. The 1st Respondent was given an opportunity to respond or react to the allegations of corrupt practice or illegal practice which led to the nullification of his election as Member of Parliament for Zambezi West

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Constituency when he was served with the Election Petition and filed an Answer thereto.

2. At the subsequent trial of that Election Petition, both himself and the Applicant herein called their respective witnesses, which resulted in the finding that he (1st Respondent) had personally committed corrupt practices and or illegal practices.

His name and particulars were clearly recorded in the Petition, his Answer and in his own examination in-chief at the trial of the Election Petition.

3. The Record shows that both the High Court and the Supreme Court found that Kakoma Charles Wahuna had engaged himself as a Parliamentary Election Candidate for Zambezi West Constituency for the 20th September, 2011 in corrupt practices and illegal practices during the campaign period and contrary to:

(a) Article 71 Clause 2(b) of the Constitution of Zambia.

(b) Section 109(2) (b) and (3) of the Electoral Act No. 12 of 2006.

(c) Regulation 9(1) and (3) of the Electoral (Code of Conduct) Regulations 2011.

- 4. The 1st Respondent herein argued against the Appellant's appeal before this Court which subsequently led to the nullification of his election upon proof of his having committed corrupt practices and or illegal practices during the elections".**

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It was submitted that in all the listed instances, the 1st Respondent's name, his particulars and the allegations of corrupt or illegal practices were and are still of public knowledge; and that the proviso to **Section 104(6) of the Electoral Act** ought to be applicable to any person who had no opportunity of appearing before the Court to respond to the question or allegation of having committed corrupt practices and or illegal practices; that the aforesaid proviso in **Section 104(6)** did not apply to the 1st Respondent; and, therefore that the High Court ought to render a Report as required by law.

The thrust of the 1st Respondent's arguments is that this Motion is misconceived as the matter is resjudicata; that this Court has no jurisdiction to consider the reliefs sought by the Applicant. It was also argued that the statutory interpretations being sought by the Applicant should not have been brought through the method employed; but it should have been brought by way of a petition in the High Court which has original and unlimited jurisdiction by

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virtue of **Article 94 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.**

On the issue of the interpretation of the provisions of **Section 104(6) of the Electoral Act No. 12 of 2006**, we were invited to consider the *ratio decidendi* in the case of **Paul John Furmino Lusaka vs. John Cheelo⁽³⁾**, which dealt with the provisions of **Section 28(6) of the Electoral Act, Cap 19** which was the forerunner to the present **Section 104(6) of the**

Electoral Act No. 12 of 2006. The *ratio decidendi* of that case is as follows:

“The provisions of Section 28(6) apply to any person involved, and emphasis is placed not so much on the liability of the person involved, but the degree of culpability. The provisions of Section 28(6) (b) of the Electoral Act, Cap 19 are discretionary, and in a proper case the High Court, in making its report, may decline to state the name of a person found to have committed a corrupt or illegal practice”.

It was the 1st Respondent’s contention that it is a grave misdirection to argue, as the Applicant has argued, that the principle of *audi alteram partem* is not a requirement after annulment of an election as the person whose election has been

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nullified would already have been heard during the trial of the Election Petition; and that one of the mandatory constitutional guarantees envisaged in the provisions of **Section 3 of the Electoral Act**, is the right of a person to be heard before being found guilty of any corrupt or illegal practice as outlined in **Section 104 of the Electoral Act**; that the mere fact that an

election result is nullified on the basis of corrupt or illegal practice should not, of itself, constitute a guilty report of the candidate; and that the High Court has, in the past, followed this procedure of conducting hearings after the determination of the Election Petition and has reported some people as shown in a number of cases; some of these are: **Aaron Michael Milner vs. Denny Kapandula (1979/HP/EP/11 - (unreported))** and **Amock Israel Phiri vs. John Chiwala Phiri 1978/HP/EP/3 (unreported)**. That in the **Lusaka vs. Cheelo case⁽³⁾**, the High Court submitted a report on the bribery which was committed by a party to the Election Petition, but declined to name the party who committed the said practice in the report.

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It was stressed that the Report must originate from the High Court. In this regard, we were referred to the case of **Michael Mabenga vs. Sikota Wina and two Others⁽⁴⁾**. In this case, after confirming that there was proof of improper conduct beyond

the balance of probability; and bordering on a criminal nature, this Court stated as follows:

“The learned trial Judge should have recommended to the Director of Public Prosecutions in terms of Section 29 (current Section 104) of the Electoral Act”.

According to Mr. Mwiimbu and Ms. Mushipe, the case of Mabenga was not subsequently referred to the trial Judge to act or comply with the requirement for a report in line with the provisions of **Section 25(1) (iv)** of the **Supreme Court of Zambia Act, Cap 25**, nor did this Court proceed to specifically direct the 2nd Respondent to act. It was also submitted that if the framers of the law in **Sections 22 and 104 of the Electoral Act** intended to clothe this Court with such powers, as implied in the Applicant’s arguments, the precise words “High Court” would not have been used; but the word “Court” would have been used. We were

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referred to our decision in the case of **Godfrey Miyanda vs. The Attorney-General⁽⁶⁾**, in which the function of the Courts of Law was stated as follows:

“The function of Courts of Law is to interpret the law and not to make it in the manner that the legislature makes laws. The Court must follow, therefore, what the legislature in its wisdom enacts as laws to govern proceedings in Courts of Law. The Courts would be overstretching their powers if they were to translate laws in a manner contrary to the intention of the legislature”.

We were urged to leave this issue for consideration by other relevant institutions who should specify what should happen after the determination of the appeal by the Supreme Court; as some jurisdictions have done. The jurisdictions mentioned were India and Tanzania.

Finally, it was argued that the alleged corrupt practices or illegal acts complained of are statute barred and, therefore not prosecutable as provided under **Section 129(5) of the Electoral Act, No. 12 of 2006** which reads as follows:

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“No prosecution for an offence against this Act shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed”.

We have examined all aspects of this Motion. In particular, we have intensely considered the arguments and submissions exchanged by the parties, as well as the various provisions of the Law and the Constitution referred to. We have also read the cases cited.

Casting aside the peripheral arguments and issues raised in this application, the main issue raised and the arguments in support thereof are premised on the power to generate a Report under ***Section 104(6) of the Electoral Act, No. 12 of 2006.***

For ease of reference, we reproduce the law as follows:

“104(6) where it appears to the High Court upon the trial of an Election Petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court shall, at the conclusion of the proceedings, prepare a report stating:

- (a) **The evidence given in the proceedings in respect of the corrupt practice or illegal practice.**

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- (b) **The names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the Court, committed.**

Provided that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

- (7) **The Registrar shall deliver a copy of every report prepared by the High Court under subsection (6) to:**
 - (a) **The Commission; and**
 - (b) **The Director of Public Prosecutions”.**

Both parties agree, as we also do, that, on the clear and plain meaning of **Section 104(6)**, it reposes the power to generate the report, in the High Court; and not in this Court. It specifically refers to proceedings in that Court. The issue before us, therefore, is whether this Court can order the High Court to generate the statutory report under **Section 104(6)**; or indeed, whether this Court can order the High Court to perform that statutory function under the Electoral Act. It is trite that the

Supreme Court can neither deal with disputed matters of fact nor deal with matters which are the subject of a hearing on the facts to be dealt with by the High Court. See the ***Meryiel Gail case***⁽²⁾. We made this point

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more poignantly in the case of ***Godfrey Miyanda vs. The High Court***⁽¹⁾, where we held as follows:

“(i) The Supreme Court of Zambia is basically an appellate Court.

It has no jurisdiction to entertain an application for mandamus at first instance.

(ii) The remedy of mandamus is not available against the Judges of the Superior Courts of Zambia in the event of an alleged failure to perform their judicial functions”.

We must stress that we do not doubt the fact that the submissions in this Motion have raised the important question of jurisdiction of this Court and the jurisdiction of the High Court in Election Petition matters. The issue of whether this Court should entertain such Motions which come after the hearing and

determination of the appeal on their merits, depends on the question of jurisdiction.

Whereas we hold that **Section 104(6) of the Electoral Act** reposes the power to generate the report which triggers further due process in an Election Petition in the High Court, we do not in any

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way, suggest that this Court has no powers to deal with post-election matters where there is a finding of an act of bribery or a corrupt act having taken place.

The powers of the Supreme Court of Zambia on an appeal in civil matters are provided under **Section 25 of the Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia.**

For ease of reference, this law reads as follows:

“25. (1) On hearing of an appeal in a civil matter, the Court:

- (a) Shall have power to confirm, vary, amend or set aside the judgment appealed from or give such judgment as the case may require;**
- (b) May, if it thinks it necessary or expedient in the interests of justice:**

- (i) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the documentation of the case;**
- (ii) order any witness who would have been competent, and compellable at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge**

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of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken before the Court;

- (iii) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness, and if a party makes application for the purpose of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial except on application to the trial Court;**
 - (iv) Remit the case to the High Court for further hearing with such instructions as regards the taking of further evidence or otherwise as appear to it necessary; and**
- (c) Shall, if it appears to the Court that a new trial should be held, have power to set aside the**

judgment appealed against and order that a new trial be held.

(2) Whenever the Court gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.”

This law clothes the Supreme Court of Zambia with enormous appellate and supervisory powers; and the Supreme Court of Zambia does have power to make specific orders to the High Court, and the Supreme Court of Zambia judgments bind the Republic and take precedence over the High Court Judgments and Orders.

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Indeed, the Supreme Court of Zambia is at the top of the principle of *stare decisis* which is essential to the hierarchical system of Courts. However, the exercise of those powers is regulated by legislation and the rules of Court made under those regulations. Most importantly, the practice and procedures in the exercise of this Court’s jurisdiction must follow proper application of the rules of Court, which, wherever possible, must be supported by existing

precedents. Therefore **Section 25 of the Supreme Court of Zambia Act** is predicated on the condition that there must be a judgment or ruling appealed against and that there is no procedural impropriety.

In the present case, the Motion before us arises out of an appeal which has already been heard and finally determined. There is no appeal pending under this Cause. It is apparent therefore, that this Court cannot properly exercise any of its powers under **Section 25 of the Supreme Court Act** in a civil appeal which has already been heard and determined. For any post-judgment application to be correctly made in this Cause, the rules

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contemplate that same should be made under **Rule 78 of the Supreme Court Rules**, which deals with the power of a single Judge or the Court to correct clerical errors and accidental slips or omissions in the Supreme Court judgment, process or document.

The present Motion does not seek to correct any clerical errors or accidental slips or omissions in this Court’s judgment delivered on the 10th day of October, 2013. It seeks to execute and enforce that judgment by virtue of **Section 9 of the Supreme Court of Zambia Act, Chapter 25 of the Laws**, without taking any further step or recourse to the High Court of Zambia which has ostensible jurisdiction to generate the report under **Section 104(6) of the Electoral Act**.

The effect of **Section 9 of the Supreme Court of Zambia Act** was explicitly stated by this Court in the case of **Caltex Oil Zambia Limited vs. Teresa Transport⁽⁷⁾** as follows:

“The effect of this Section is that our Judgments and Orders are to be enforced in the High Court as there is no provision to conduct running litigation in this Court”.

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In our considered view, if we allow this Motion in the format it has been made under **Rule 48(5) of the Supreme Court of Zambia Act**, in the circumstances of this case, where we have

since dealt with the appeal that was before us by delivering our final Judgment on the 10th of October, 2013, then we will open doors to running litigation to take place in this Court. The *ratio decidendi* in the **Caltex case**⁽⁷⁾, which we still approve, does not permit us to engage in running litigation. We strongly suggest that the applicant may pursue the issue of enforcement of our Judgment in the High Court which has unlimited jurisdiction, if they so wish. The party who will be dissatisfied with the result from the High Court shall have the right of appeal to this Court. In that event, the issues raised shall be properly before us and we shall be at liberty to exercise any of the powers prescribed by **Section 25 of the Supreme Court Act.**

For these reasons, we hold that this Motion is misconceived and has no merit. We dismiss it. Since the issues raised were

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constitutional in nature, we order that each party shall bear its own costs.

M. S. Mwanamwambwa
AG/DEPUTY CHIEF JUSTICE

H. Chibomba
SUPREME COURT JUDGE

G. S. Phiri
SUPREME COURT JUDGE

M. E. Wanki
SUPREME COURT JUDGE

E. N. C. Muyovwe
SUPREME COURT JUDGE

E. M. Hamaundu
SUPREME COURT JUDGE

F. M. Lengalenga
AG/SUPREME COURT JUDGE