

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Constitutional Jurisdiction)

2016/HP/EP/046



BETWEEN:

PHIRI ALFONSO KAZICHE

PETITIONER

AND

MARGARATE MITI

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

For the Petitioner: Mr. H. B Mbushi – Messrs H.B.M Advocates

For the Respondent: Ms. M. Kasongola of Messrs F.B Nangzyimbo

R U L I N G

Legislation referred:

1. *Constitution of Zambia act, 2016*

Cases referred:

- (i) *Twampane Mining Co-operative Society Limited v. E and M Storti Mining Limited (2011) 3 ZR 67*
- (ii) *Access Bank (Z) Limited and Group Fuve /Zcon Business Park joint venture (suing as a firm) SCZ/8/52/2014*

I have heard and considered the submissions by the learned Counsel for both parties. The essence of Dr. Mbushi's preliminary application is that the 1st Respondents Advocates who filed the application to dismiss the Election Petition for irregularity have not filed in Notice of appointment of Advocates and as such they have no locus standi in the matter and on that score alone the 1st Respondents application be dismissed with costs.

Learned Counsel went further and submitted that the 1st Respondents Advocates have not given an address of service within 10 kilometers radius upon which to serve the documents contrary to Order IV (i) (a) (b) of the High Court Rules Cap 27 of the Laws of Zambia.

The non compliance will require the Petitioner to serve documents on the 1st Respondents in Kabwe. He invited the Court to dismiss the 1st Respondents preliminary to dismiss the Petition on that score.

The learned Ms. Kasongole countered the submissions. Whilst tacitly conceding that there is no Notice of appointment of Advocates, she contended that the irregularity is curable and Court ought to allow for curing of the defect.

Dr. Mbushi in his reply submitted that since the argument is that irregularity is curable then the Petitioners position be considered in the same light and the Court should maintain the status quo so that the petition is heard on merit.

He finally submitted that infact it is the 1st Respondents' application which is irregular and ought to be dismissed with costs.

The state of affairs on the file is that there is no notice of appointment of Advocates on the part of the 1st Respondent. They therefore have no locus standi on the matter. Put simply they have no right to appear on behalf and file documents on behalf of the 1st Respondent. I must point out that parties and litigants who chose to ignore Orders or Rules of the Court do so entirely at their own peril. (See case of **Twampane vs. Storti**)¹. There is no application for leave to regularize their appearance.

Having said this, I have visited the recent Supreme Court Judgment in the case of **Access Bank (Z) Ltd and Group Five /Zcon Business Park Joint Venture (suing as a firm) SCZ/8/52/2014** ² where the Supreme Court had occasion to pronounce themselves on the import of Article 118 (2) e of the current constitution which provides as follows:-

"In exercising judicial authority, the Court shall be guided by the following principles (e) justice shall be administered without undue regard to procedural technicalities....."

Their Lordships opined as follows:-

"In conclusion, we are mindful that the issue regarding Article 118 (2) (e) of the constitution of Zambia was raised in passing by Silwamba, SC and was not part of his

written arguments before us. We do not intend to engage in anything resembling interpretation of the constitution in his judgment. All we can say is that the constitution never means to oust the obligation of the litigants to comply with procedural imperatives as they seek justice from the courts”

I am bound by the authoritative instructions of the Supreme Court by doctrine of stare decisis.

Faced with the preliminary issue launched by Dr. Mbushi, and having traversed the relevant law, I am of the considered firm view that in public interest and in the spirit of Article 118 (2) e of the constitution, this is a proper case to invoke Order 3 (2) of the High Court Rules that gives one jurisdiction to grant a litigant any such interim relief as the Court may deem fit in the interest of justice.

I hereby Order the 1st Respondent be granted leave to formalize their appearance by filing in the requisite notice of appointment of Advocates and Agents within the prescribed radius as required by law within the next 48 hours (by the 22nd) of September, 2016 before the close of business.

For purposes of clarity, Dr. Mbushi's objection was richly deserving and anchored on legal foundation. The application by the learned Doctor Mbushi was necessitated by the indolence or lack of vigilance on the part of the Advocates for the 1st Respondents. A successful litigant must not be deprived of the fruits of his successful ruling.

The costs are for the Petitioner to be paid by the 1st Respondent which costs are to be taxed in default of agreement.

Leave to appeal granted.

Dated at Lusaka this ^{21st}.....day of September, 2016


Mwila Chitabo, SC
Judge