

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

**2016/HP/EP/22**

*(Constitutional Jurisdiction)*

**IN THE MATTER OF: 07 ARTICLE 47(2) 51, OF THE CONSTITUTION  
PRINCIPAL 54, 72(2) ( C ) 73(1) OF THE REPUBLIC  
26 SEP 2016 OF ZAMBIA  
REGISTRY  
P.O. BOX 50067, LUSAKA**

**AND**

**IN THE MATTER OF: SECTION 81,89,97 (1) 98 ( c ) 99 100(2)(a)  
OF THE ELECTORAL PROCESS ACT NO 5  
OF 2016**

**AND**

**IN THE MATTER OF: CODE OF CONDUCT RULES 12, 15 (a) (h)(k)**

**IN THE MATTER OF: ARTICLE 76 OF THE CONSTITUTION OF  
ZAMBIA**

**AND  
IN THE MATTER OF: MANDEVU CONSTITUENCY ELECTIONS  
HELD IN ZAMBIA ON THE 11<sup>TH</sup> AUGUST  
2016**

**BETWEEN:**

**JIMMY DONS**

**PETITIONER**

**AND**

**JEAN KAPATA**

**1<sup>ST</sup> RESPONDENT**

**ELECTORAL COMMISSION OF ZAMBIA**

**2<sup>ND</sup> RESPONDENT**

**Before The Honourable Mrs Justice P.C.M. Ngulube in Open Court.**

For the Petitioner:

Dr Henry Mbushi, Messrs HBM  
Advocates.

For the 1<sup>st</sup> Respondent: Mr B.C. Mutale, State Counsel,  
Mr Kaunda, Messrs Ellis and  
Company.

For the 2<sup>nd</sup> Respondent: Mr K. Wishimanga, Messrs A.M.  
Wood and Company.

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## R U L I N G

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### ***Cases referred to:***

- 1. Twampane Mining Co-operative Society Limited vs. E and M Storti Mining Limited SCZ Judgment Number 20 of 2011.***
- 2. Nkhuwa vs. Lusaka Tyre Services Limited (1977) ZR 43.***

This is the Petitioner's Advocates' application for an adjournment. The Learned Counsel for the Petitioner Dr Mbushi filed a Notice of Motion for Variation of Hearing date on the 26<sup>th</sup> of September, 2016, the date for the commencement of the hearing of the Petition. He applied for an adjournment to the 27<sup>th</sup> of September, 2016. stating that the Petitioner had some problems and that since the Petition was due to be heard from the 26<sup>th</sup> to the 30<sup>th</sup> of September, 2016 as per the Orders for Directions, he was willing to forfeit today's date because he is unable to proceed with the Petition today.

In reply, State Counsel Bonaventure Mutale submitted that at about 1000 hours today, the 26<sup>th</sup> of September, 2016, he was served with a Notice of Motion for Variation of hearing date, which has been brought up this morning when the matter is scheduled for hearing. State Counsel opposed the application as

it is in breach of the Orders for Directions and stated that the last day for liberty to apply was the 23<sup>rd</sup> of September, 2016. He submitted that this application has been made out of time and that the Learned Counsel for the Petitioner has not argued his motion. On the application for adjournment to the 27<sup>th</sup> of September, 2016, State Counsel submitted that no satisfactory grounds have been advanced for an adjournment. He further submitted that the Petitioner had adequate time to prepare from the 16<sup>th</sup> of September, 2016 when the Orders for Direction were given. State Counsel submitted that Petitions are run on specific time frame and that it is important for the court to adhere to the said time frame. He submitted that if the Petitioner does not start the trial today, then the Petition must be dismissed.

Mr Wishimanga, on behalf of the 2<sup>nd</sup> Respondent submitted that he was in total agreement with the submissions of the 1<sup>st</sup> Respondent's Learned Counsel and referred to the case of ***Twampane Mining Co-operative Society Limited vs. E and M Storti Mining Limited***<sup>1</sup>, where the court stated that-

***“Rules of court must be adhered to strictly, parties who breach such rules do so at their own peril.”***

Mr Wishimanga submitted that the Petitioner has failed to comply with the Orders for Directions as on the date set for the hearing of the Petition, he is not ready for the hearing. He has not filed any Bundles and he is clearly in breach of the Orders for Directions . Mr Wishimanga prayed that the motion be dismissed and that the Petition be dismissed with costs.

Dr Mbushi submitted that the rules of procedure should not defeat the substantive matter. He submitted that this is not an ordinary civil matter and that justice must be seen to be done. He stated that his application is for an adjournment since the court will hear the matter up to the 30<sup>th</sup> of September, 2016. He emphasized that justice must be seen to be done.

I have considered the submissions by the Petitioner's Learned Counsel as well as those by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Learned Advocates. This court issued Orders for Directions in this matter on the 15<sup>th</sup> of September, 2016. It specifically ordered that the Petitioner would file his Reply if any by the 19<sup>th</sup> of September, 2016. The court further ordered that the Petitioner would serve his List of Documents with the Reply. The parties were given liberty to apply only up to the 23<sup>rd</sup> of September, 2016. The Petitioner did not adhere to the Orders for Directions. He did not file any documents nor did he file any Bundles in this matter. The matter was scheduled for commencement of the hearing of the Petition this morning, the 26<sup>th</sup> of September, 2016 but the Learned Counsel for the Petitioner filed a Notice of Motion to adjourn.

It is important to state that the Rules of court must be obeyed and in order to justify a court's extension the time, there must be some material on which that court can exercise its discretion. The Petitioner's Learned Counsel has not given sufficient grounds why the matter should be adjourned. Adjourning the matter when no reasons have been advanced would defeat the purpose for the rules which provided a timetable for hearing of the

Petition. I have not found any merit in the Petitioner's Advocates application for an adjournment. They have failed to adhere to the Orders for Directions which were very clear and were issued on the 15<sup>th</sup> of September, 2016. As was stated by the Supreme Court in the case of **Nkhuwa vs. Lusaka Tyre Services Limited**<sup>2</sup>, those who choose to ignore Rules of Court do so at their own peril. The application for motion to adjourned is dismissed. The Petitioner has failed to prosecute his Petition.

I accordingly dismiss the Petition for want of prosecution with costs to the Respondents which should be taxed in default of agreement.

***Dated this day 26<sup>th</sup> September, 2016***



**HONOURABLE MRS JUSTICE P.C.M. NGULUBE  
HIGH COURT JUDGE**