

**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT LUSAKA**

2016/HP/EP034

BETWEEN:

MAKUWA ANTHONY LUSAKA



PETITIONER

AND

**HARRY KALABA
ELECTORAL COMMISSION OF ZAMBIA**

**1ST RESPONDENT
2ND RESPONDENT**

Before the **Hon. Mr. Justice M. Musaluke** in Chambers on the 28th day of September, 2016

Appearances

For the Petitioner: Mr. L. M. Chikuta or Messrs. Mumba Malila & Partners

For the 1st Respondent: Mr. N. Chanda of Messrs. Nicholas Chanda & Associates

For the 2nd Respondent: Mr. P. Songolo of Messrs. Philsong & Partners

RULING

Legislation referred to:

1. ***The Constitution of Zambia (Amendment) Act, 2016***
2. ***The Electoral Process Act, No. 35 of 2016***

On 8th September, 2016, a scheduling and Case Management Conference was held in this matter. At that Conference, Order for Directions was made. One of the orders I made was that:

“Security for costs in this matter in the sum of K2,400.00 shall be paid into Court by the Petitioner not later than 15th September, 2016”

The Petitioner did not pay the Security for costs as Ordered. The Security for costs was only paid on 22nd September, 2016 (i.e. 14 days later).

Advocates for the 1st and 2nd Respondents have applied that the failure by the Petitioner to pay Security for costs within the time ordered by this Court is self-defeating and fatal. They have urged me to dismiss the Petition on the basis of non-compliance by the Petitioner to my Order of 8th September, 2016.

In Response, Counsel for the Petitioner argued that even though the Order of this Court used the word “shall” that word was principally regulatory and not to be understood to mean that it was mandatory.

He argued that even though security for costs was paid late, there was no injustice done to the Respondents and no prejudice would be rendered to the Respondents.

I have looked at the law that governs Election Petitions, in particular Section 102 of the Electoral Process Act which provides for payment of Security for Costs by the Petitioner.

Section 102 (3) provides that:

“where, after the presentation of an election petition, no Security for Costs is given as required by or under this section, No further Proceedings shall be heard on that election petition”

Clearly, the Petitioner is obliged to follow the Order of this Court and pay Security Costs as per provision of the law. However, the law has given only one sanction for failure to pay Security for Costs and that is to halt the proceedings until the Security is paid.

In this case at hand, the Petitioner failed to pay for Security for Costs within the time I had ordered but paid at a later date.

The Petitioner indeed did not follow my direction to pay Security for Costs within a certain time limit. I however, note that the Security for Costs was later paid and therefore, the proceedings cannot be halted any further. The payment has been made before trial has begun, I therefore find that no prejudice will be occasioned by the late payment of the Security for Costs by the Petitioner on the Respondents.

Further, Article 118 (2) (e) of the Republican Constitution gives a direction that justice should be administered without regard to procedural technicalities. That said, I find that the late payment of Security for Costs cannot in itself precipitate the collapse of a Petition as it is just a procedural technicality.

I order that the Petition will proceed, I however, condemn the Petitioner to costs for this application.

Delivered the 28th day of September 2016

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M. MUSALUKE
JUDGE

