

IN THE CONSTITUTIONAL COURT
AT THE CONSTITUTIONAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

2016/CC/A018

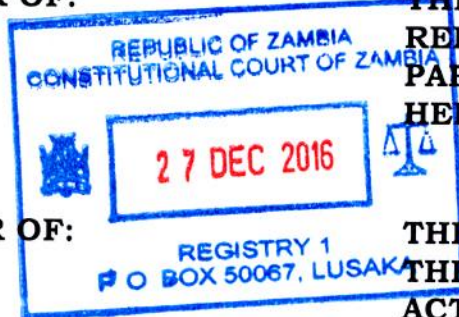
IN THE MATTER OF:

THE PARLIAMENTARY PETITION
RELATING TO THE
PARLIAMENTARY ELECTION
HELD ON 11TH AUGUST 2016

AND

IN THE MATTER OF:

THE CONSTITUTION OF ZAMBIA,
THE CONSTITUTION OF ZAMBIA
ACT, CHAPTER 1 VOLUME 1 OF
THE LAWS OF ZAMBIA



AND

IN THE MATTER OF:

ARTICLES 1, 2, 5, 8, 9, 45, 48,
50, 54, 70, 71, 72, AND 73 OF
THE CONSTITUTION OF ZAMBIA
ACT, CHAPTER 1, VOLUME 1 OF
THE LAWS OF ZAMBIA

AND

IN THE MATTER OF:

SECTION 29, 37, 38, 51, 52, 55,
58, 59, 60, 66, 68, 69, 70, 71, 72,
75, 76, 77, 81, 82, 83, 86, 87 AND
89 OF THE ELECTION PROCESS
(ELECTORAL CODE OF CONDUCT)
NO. 35 OF 2016 OF THE LAWS OF
ZAMBIA

AND

IN THE MATTER OF:

SECTION 96, 97, 98, 99, 100,
106, 107 AND 108 OF THE
ELECTORAL PROCESS
(ELECTORAL CODE OF CONDUCT)
NO. 35 OF 2016 OF THE LAWS OF
ZAMBIA

AND

IN THE MATTER OF:

**THE ELECTORAL CODE OF
CONDUCT 2016**

BETWEEN:

MARGARET MWANAKATWE

APPLICANT

AND

CHARLOTTE SCOTT

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

ATTORNEY GENERAL

3RD RESPONDENT

Before Mr. Justice E. Mulembe on 27th December, 2016

For the Applicant:

**Mr. B. Mutale, SC, of Ellis &
Company**

Mr. K. Bwalya of KBF & Partners

For the 1st Respondent:

**Mr. M. H. Haimbe of Malambo &
Company**

**Mr. K. Mweemba of Keith
Mweemba Advocates**

For the 2nd Respondent:

No Appearance

For the 3rd Respondent:

**Mr. L. Kalaluka, SC,
Attorney General**

RULING

Cases referred to:

- 1. Watson Nkandu Bowa v. Fred Mubiana and ZESCO (2012) ZR 165**
- 2. Priscilla M. Kamanga v. Attorney General and Another (2008) 1 ZR 7**
- 3. Ruth Kumbi v. Robinson Kaleb Zulu (2009) ZR 183**

4. **Sonny Paul Mulenga and Others v. Investrust Merchant Bank Limited (1999) ZR 101**
5. **Newplast Industries v. Commissioner of Lands and Attorney General, SCZ Judgment No. 8 of 2001**
6. **Isaac Tantameni Chali v Liseli Mwala (1995-97) ZR 199**
7. **Chidzankunfa v. Nedbank Malawi Limited, MSCA No. 70 of 2009 (Malawi Supreme Court of Appeal)**
8. **Okpokwasili v. Idris and Another Suit No. FCT/HC/CV/4714/11 (High Court of Abuja)**

Legislation referred to:

1. **Constitutional Court Rules, Statutory instrument No. 37 of 2016**
2. **Electoral Process Act No. 35 of 2016**
3. **Constitution of Zambia (Amendment) Act No. 2 of 2016**

This is an application for an order for stay of execution of judgment pending appeal brought pursuant to Order X rule 2(1) and (2) and Order XI rule 7 of the **Constitutional Court Rules**¹. The application was initially made *ex-parte* but heard *inter-parte*.

The facts leading to this application are that the Applicant (the 1st Respondent in the court below), and the 1st Respondent (the Petitioner in the court below), were candidates for the position of Member of Parliament for Lusaka Central Constituency during the general elections that were held on 11th August, 2016. The Applicant stood as a Patriotic Front (PF) candidate and the 1st Respondent as a United Party for National Development (UPND) candidate. The Applicant was declared the winner of the poll. Dissatisfied, the 1st Respondent petitioned the results and the High Court passed judgment in her favour on 24th November, 2016, thus nullifying the result for the election of Member of Parliament for

Lusaka Central Constituency. The court below also denied the Applicant stay of execution of judgment and she renewed the application before this Court.

From the outset, I want to point out that the parties to the present application made lengthy oral and written submissions. I am grateful to counsel for the wealth of submissions and the authorities referred to on the principles applicable to applications for stay of execution of judgment pending appeal. I have taken the time and liberty to review all the materials submitted on behalf of the parties. In this regard, suffice to state here that the details of the parties' oral and written submissions are on the record for further reference. I also find it imperative at this early stage to point out that by way of Consent Order filed on 14th December, 2016, the 2nd Respondent is no longer a party to these proceedings.

In the affidavit in support of the application for stay of execution sworn by Margaret Mwanakatwe, the Applicant herein, it was averred, among other things, that the appeal had prospects of success. She also deposed that, if the stay was not granted, the Electoral Commission of Zambia would proceed to declare a by-election and the appeal will amount to an academic exercise. Further, that the people of Lusaka Central Constituency will not have any representation pending any by-election if this Court does not grant a stay of execution of judgment. She sought the indulgence of this Court to grant the stay of execution of the judgment pending the determination of the appeal.

The thrust of the Applicant's submission is that the prospects of her appeal succeeding are high and relied on the case of **Watson Nkandu Bowa v. Fred Mubiana and ZESCO**¹, where the Supreme Court pointed out a twofold test on an application for stay of execution pending appeal, that the considerations are: the prospect of the appeal succeeding and the irreparable damage if stay is not granted and the appellant's appeal succeeds. She contended that the court below had not applied the required standard of proof in election petitions, citing the case of **Priscilla M. Kamanga v. Attorney General**², where the Supreme Court stated that the standard of proof in an election petition is higher than the ordinary proof in civil matters, which is based on a balance of probabilities. It was further submitted that the court below included acts that were done before the 1st Respondent was nominated as a candidate and before the campaign period, contrary to the law as provided in the **Electoral Process Act**².

The Applicant invited the Court to address itself to the damage that may be occasioned to the Applicant in the event that a stay was refused and the appeal succeeds. Reference was made to Article 72(8) of the **Constitution of Zambia**³ pursuant to which a vacancy leads to preparations for a by-election. That, the Applicant asserted, could entail the Government incurring resources for a by-election which may not occur as the Constitutional Court may decide the matter otherwise. Further, that if a stay were not granted, the appeal maybe rendered nugatory and an academic exercise as the Applicant will not be able to exercise her right to

appeal as provided for under Article 73(3) of the Constitution. Among others, reference was made to the case of **Ruth Kumbi v. Robinson Kaleb Zulu**³ where it was stated that a stay of execution is granted in order to maintain the status quo of the parties pending the application before the Court. The Applicant also invited the Court to address itself to the damage that may be occasioned to her in the event that a stay was refused and the appeal succeeds. Reference was made to Article 72(8) of the **Constitution of Zambia**³ pursuant to which a vacancy leads to preparations for a by-election. That, the Applicant asserted, could entail the Government incurring resources for a by-election which may not occur as the Constitutional Court may decide the matter otherwise. Further, that if a stay were not granted, the appeal maybe rendered nugatory and an academic exercise as the Applicant will not be able to exercise her right to appeal as provided for under Article 73(3) of the Constitution. It was also contended that if a by-election ensued, the Applicant would be disadvantaged as she may not have time to campaign while pursuing the appeal.

The Applicant also relied on Article 73 of the **Constitution of Zambia**³ to argue that the petition has not yet been determined and she was entitled to continue holding her seat in Parliament. She placed emphasis on Article 73(4) of the Constitution, which reads:

“A Member of Parliament whose election is petitioned shall hold the seat in the National Assembly pending the determination of the election petition.”

The Applicant stated that the above provision talked about the initial petition in the High Court and the appeal in the Constitutional Court; that it clearly shows that the holding of the seat in the National Assembly by the person whose election has been petitioned applies to the matter being determined. The Applicant acknowledged that a stay was entirely in the discretion of the Court, citing the case of **Sonny Paul Mulenga and Others v. Investrust Merchant Bank Limited**⁴.

In the affidavit in opposition sworn by Charlotte Sarah Harland Scott, the 1st Respondent in the present application, she averred that since the judgment of the High Court rendered on 24th November, 2016, a lot had transpired in the Constituency, including numerous transgressions committed by the Patriotic Front and the Applicant aimed at creating the impression in the minds of the electorate that the nullification of the election by the lower court was wrong and of no legal consequence. She averred that the transgressions included claims by the Applicant that she was the duly elected Member of Parliament; media reports where an aide to the President of the Republic claimed that the Patriotic Front viewed the nullification of their seats as tainted with bias by the Judiciary; an act of violence perpetrated on an individual wearing United Party for National Development regalia at Crossroads Mall within Kabulonga Ward 16; media reports of the donation of buses to the community in State Lodge within Lusaka Central Constituency; and, continued maintenance of a Facebook

page by the Applicant where she describes herself as the Member of Parliament for Lusaka Central Constituency.

The 1st Respondent further averred that many people had expressed concern to her through telephone calls, that the Applicant and the Patriotic Front were going about as though the seat was never nullified; that she shared those concerns and felt greatly disadvantaged in that, despite the court ruling, the Patriotic Front were giving constituents in Lusaka Central Constituency the impression that they were in charge and that the nullification was of no consequence.

She further deposed that the granting of a stay will be highly prejudicial to her as it would fuel the misconception that the nullification is of no effect and the Applicant was duly elected. She averred that granting the Applicant a stay would create an environment unfavorable to her should the by-election ensue after the conclusion of the appeal. Also, that a stay would result in dire consequences since the appeal process was not time bound and throughout the pendency of the appeal, the Applicant would enjoy all the rights and benefits accruing to a Member of Parliament to the 1st Respondent's disadvantage and the public at large. She further averred that a great number of the electorate in Lusaka Central do not consider the Applicant to be their parliamentary representative.

In skeleton arguments in favour of the 1st Respondent, it was argued that that section 108(4) of the **Electoral Process Act** is

clear that following the nullification of the election, the Applicant could no longer claim to represent Lusaka Central Constituency. The 1st Respondent also questioned the jurisdiction of the Court to grant the relief sought and that to do so would not only be prejudicial to the 1st Respondent, but would have the effect of an injunctive order against persons that are not party to the proceedings, and who were required to execute their constitutional duties following the nullification of a seat. Specific reference was made to the role of the Speaker of the National Assembly and the Electoral Commission of Zambia. That the Speaker, under Article 72(8) of the Constitution, has a mandatory duty to declare a seat vacant by informing the Electoral Commission of Zambia of the vacancy. Upon being so notified, the Electoral Commission of Zambia is required under Article 57 to arrange the holding of a by-election. The 1st Respondent contended that the relief sought was not tenable at law. It was submitted that the case of **Newplast Industries v. Commissioner of Lands and Attorney General**⁵, among others, showed that a party is obliged to abide by the mode of commencement prescribed in a statute in seeking relief before the court. It was contended that for all intents and purposes, the order of stay would only be effective against the Speaker and the Electoral Commission of Zambia and not the 1st Respondent. The 1st Respondent argued that, on the authority set in **Isaac Tantameni Chali v Liseli Mwala**⁶ this Court was precluded from considering the interests of non-parties such as the Speaker.

The 1st Respondent contended that, pursuant to section 108(4) of the **Electoral Process Act**², the vacancy that existed prior to the election subsists upon the lower court declaring the election a nullity. There was, therefore, nothing to stay as section 108(4) was clear.

On Article 73 of the Constitution, the 1st Respondent's position was that it only applied to initial proceedings in the lower court and it was not open for the Applicant to claim a constitutional right as Member of Parliament once the seat had been nullified by the High Court; otherwise the Legislature would have made it expressly clear. That in the circumstances of the case, this Court was not vested with authority to grant a stay as it would be in violation of the Constitution, section 108(4) of the **Electoral Process Act**² and rules of practice that prohibit the making of an order against a non-party.

In the alternative, the 1st Respondent submitted that the grounds upon which a stay may be granted had not been established in the instant case. That, contrary to the Applicant's assertion, the status quo which subsisted is that immediately prior to the election so that none of the contestants is placed at an undue advantage pending the conclusion of the appeal by the Constitutional Court. If that is not maintained, the effect is that the Applicant would have an upper hand over the 1st Respondent in that the Applicant will engage the electorate as Member of Parliament to the detriment of the 1st Respondent; that the Applicant and the political party she

belongs to had already shown a propensity to disadvantage the 1st Respondent. That in itself had the potential of rendering the appeal nugatory as the Applicant would have obtained an advantage in the event that the Court upheld the judgment of the lower court and a by-election ensued. The interests of justice, it was asserted, demanded that a stay should be denied to keep a level playing field.

Further, the 1st Respondent contended that the Applicant needed to show that special circumstances exist to justify the granting of a stay. In the case of **Sonny Paul Mulenga and Others v. Investrust Merchant Bank Limited**⁴, the Supreme Court stated that a successful litigant should only be denied immediate enjoyment of a judgement on good and sufficient grounds and that more required to be advanced to persuade the court to grant a stay. That the Applicant in this case needed to show that without a stay, she would stand to be ruined or could not be restored to the position she would have been had the stay been granted. The Court was invited to consider the reasoning in several cases such as **Chidzankunfa v. Nedbank Malawi Limited**⁷; and, **Okpokwasili v. Idris and Another**⁸ which all show that current jurisprudence favours the granting of stays where special circumstances subsist. The 1st Respondent submitted that the Applicant herein had not exhibited any special circumstances apart from arguing that the appeal would be rendered nugatory and an academic exercise without demonstrating how. It was submitted that this Court's final decision would not be affected by anything outside court during the pendency of the appeal as to render it nugatory.

In oral submissions, learned State Counsel Mr. Bonaventure Mutale, stated that the Applicant would rely on the Affidavit in Support of the application for stay of execution and the Skeleton Arguments. The Applicant had also filed a list of authorities in support of the application.

Mr. Mutale, SC, stressed that the appeal had high prospects of success; that all the ten grounds of appeal show that the court below merely considered facts favourable to the 1st Respondent, without weighing the same against facts adduced relating to the Applicant. And referring to the 1st Respondent's submission that the effect of the judgment of the court below in the context section 108(4) of the **Electoral Process Act**² meant that there was now a vacancy in the seat for Lusaka Central Constituency and there was nothing to stay, Mr. Mutale argued that the 1st Respondent's argument glossed over the fact that the matter had now come on appeal to this Court. The matter was now within the jurisdiction of the Constitutional Court and could only be concluded by virtue of Article 73 of the Constitution. State Counsel further submitted that section 108(4) of the **Electoral Process Act**² was in conflict with the Constitution and, by virtue of Article 1 of the Constitution, should be held inoperative.

Agreeing with the submissions of Mr. Mutale, SC, learned counsel Mr. Kelvin Bwalya, on behalf of the Applicant, submitted that the 1st Respondent's position that the matter was not properly before this Court was misconceived. The Applicant, he argued, had a right of

appeal pursuant to Article 73(3) of the Constitution and it includes the relief of a stay of execution where appropriate.

In opposing the application, learned counsel for the 1st Respondent, Mr. Mulambo Haimbe, also relied on the affidavit in opposition, skeleton arguments and list of authorities filed into court. Mr. Haimbe reiterated much of what was submitted in the 1st Respondent's skeleton arguments, particularly on the mandatory constitutional duties the Speaker of the National Assembly and the Electoral Commission of Zambia have to undertake following the nullification of an election. He contended that the application for a stay was targeted at those third parties who were not party to the proceedings. Mr. Haimbe disagreed with the Applicant's position that section 108(4) of the **Electoral Process Act**² was in conflict with Article 73 of the Constitution and pointed out that the two provisions were in accord. He contended that Article 73(4) of the Constitution only subsists during the hearing of the election petition before the High Court and not during the pendency of an appeal; that the right the Applicant was seeking to enforce was not spelt out in the Constitution.

Mr. Haimbe also reiterated the 1st Respondent's position that section 108(4) of the **Electoral Process Act**² on what follows following the nullification of a seat. He argued that it was clear that the status quo was that there was a vacancy in Lusaka Central Constituency and the Applicant could not argue before this Court

that there was some other status quo subsisting and worth preserving.

Picking up submissions on behalf of the 1st Respondent, learned counsel Mr. Keith Mweemba was of the view that Article 73 only stated that the aggrieved party may appeal to the Constitutional Court. He argued that, contrary to Mr. Bwalya's view that the right of appeal did not come in skeleton form, a stay is an equitable remedy in the discretion of the Court to be exercised judiciously. Mr. Mweemba shared the views of Mr. Haimbe on section 108(4) of the **Electoral Process Act**², that it was not in conflict with the Constitution and that counsel for the Applicant had made a generalized statement that section 108(4) was unconstitutional without demonstrating to what extent that provision was inconsistent with the Constitution. It was his submission that there was nothing unconstitutional about the **Electoral Process Act**² as it was drafted in line with the Constitution.

The Attorney General, Mr. Likando Kalaluka, SC, submitted on behalf of the 3rd Respondent that he merely wanted to refer the Court to relevant constitutional provisions which he believed should be considered. The learned Attorney General stated that the gist of his submission related to Article 72(2)(h) of the Constitution, which reads:

“The office of Member of Parliament becomes vacant if the member...is disqualified as a result of a decision of the Constitutional Court;”

Mr. Kalaluka, SC, submitted that Article 72(2)(h) was clear that a parliamentary seat becomes vacant upon a decision of the Constitutional Court to that effect. And referring to Article 72(8) of the Constitution, the Attorney General was of the view that that provision did not imply that the Speaker should write to the Electoral Commission of Zambia following the High Court judgment. Article 72(8) reads:

“Where a vacancy occurs in the National Assembly, the Speaker shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission of the vacancy, in writing, and a by-election shall be held in accordance with Article 57.”

Mr. Kalaluka, SC, submitted that the Speaker would only write to the Electoral Commission of Zambia upon there being a vacancy; that Article 73 of the Constitution, which both counsel for the Applicant and the 1st Respondent had referred, said nothing about a vacancy. He went on to state that the effect of this Court not granting a stay is that there would be no vacancy. A vacancy can only be there after a decision of the Constitutional Court on appeal. Mr. Kalaluka, SC, urged the Court to pay due regard to the provisions of Article 72(2)(h) aforesaid; that as of now there was no decision of the Constitutional Court and, as such, a stay should be granted to give effect to Article 72(2)(h).

The Attorney General submitted that the jurisdiction which the Constitutional Court has is that which emanates from Article 128 of the Constitution, giving the Court original and final jurisdiction to hear appeals relating to the election of Members of Parliament and that is what Article 72(2)(h) of the Constitution referred to. He

argued that there was no other provision in the entire Constitution where the Constitutional Court has jurisdiction to make a decision as to the vacancy of the office of Member of Parliament. The Attorney General stressed that Article 72(2)(h) can only refer to proceedings where there is an appeal from the High Court and that if the Constitutional Court were to uphold the decision of the High Court, then it would mean that the Applicant would have been disqualified on account of not having been duly elected and the decision of the High Court would satisfy Article 72(2)(h) insofar as it would declare a vacancy in the office of Member of Parliament.

On section 108(4) of the **Electoral Process Act**², the Attorney General submitted that there seemed to be a conflict with Article 72(2)(h) of the Constitution. He suggested that the inconsistency lay in the fact that while Article 72(2)(h) envisaged a vacancy upon a decision of the Constitutional Court, section 108(4) **Electoral Process Act**² envisaged a vacancy upon a High Court decision. The Attorney General was of the view that the Court should give effect to the provisions of the Constitution pursuant to Article 1(1) of the Constitution.

On Article 73(4) of the Constitution, the learned Attorney General was of the view that that provision did not make reference to the question of vacancy. However, it did, he submitted, mention that a Member of Parliament shall hold the seat pending determination of the election petition.

The question, the Attorney General submitted, was whether the petition had been determined. He wondered what the appeal would be about if the interpretation is that the petition has been determined. Article 73(4) of the Constitution, Mr. Kalaluka submitted, does not specify which court determines the petition; it merely refers to pending determination of an election petition. He was of the view that if the Legislature had meant the High Court, it would have been expressly stated. He noted that there was need for this Court to adopt a purposive interpretation because, while the Applicant had argued that determination is upon the Constitutional Court, the 1st Respondent was of the view that it was upon the High Court. The Attorney General opined that Article 73(4) of the Constitution was capable of two meanings; that in seeking the intention of the Legislature, he urged the Court not to read Article 73(4) in isolation but with other provisions such as Article 72(2)(h). To stress his point, Mr. Kalaluka, SC also referred to Article 72(5) where a vacancy is created when the Member of Parliament is expelled from his or her political party. He urged the Court to direct its mind to the fact that, while it dealt with expulsions, Article 72(5) gives an insight of what the intention of the Legislature is where a seat becomes vacant; that it envisages that as long as there is challenge in Court, the seat will not be vacant until confirmed so by the Court. Thus, the Attorney General submitted, whether it is Article 72(2) or Article 72(5), they all relate to vacancy and that is when, pursuant to Article 72(8) of the Constitution, the Speaker will write to the Electoral Commission of Zambia. He reiterated the

point that the Court should not read Article 73(4) of the Constitution in isolation.

On the question of this Court lacking jurisdiction to stay a declaratory order as submitted by counsel for the 1st Respondent, the learned Attorney General submitted that he differed with that position and stated that no authorities had been cited to that effect. And referring to paragraph 11 of the 1st Respondent's affidavit in opposition, the Attorney General agreed that the appeal process was not time bound. And referring to Article 57 of the Constitution, which requires that where a vacancy is created in the office of Member of Parliament a by-election shall be held within 90 days, Mr. Kalaluka, SC, was of the view that if a stay is not granted or the Court orders that the seat is vacant, a situation would arise where a by-election will be held while the appeal process has not been completed.

Winding up his submission, the learned Attorney General raised the issue of what he called scarce public resources which would be expended in the event of a by-election being held; that should the Court declare that the Lusaka Central Constituency seat is vacant, that would trigger the Electoral Commission of Zambia to start the preparations for the by-election. He submitted that there was always the possibility that the Court may find the Appellant to have been duly elected. He urged the Court to give effect to Article 72(2)(h) of the Constitution by granting a stay.

In reply, learned counsel for the Applicant, Mr. Bwalya, among other points, maintained that an appellate court can stay a decision of a lower court and that if a stay were not granted, the people of Lusaka Central Constituency would be without representation and the Member of Parliament will be denied the privilege of providing leadership and guidance on developmental projects.

I want to state at this point that I am grateful for all the submissions and arguments advanced in this matter in favour of the parties. I have accordingly given due consideration to the points and issues raised. As I indicated earlier, the parties made lengthy submissions and the details are on the record.

What I find intriguing is that the gist of the arguments advanced by the parties is mainly anchored in each party's understanding of the relevant provisions of the law as contained in the Constitution and the **Electoral Process Act**² in as far as this application is concerned. The thrust of the Applicant's submission is that the prospects of her appeal succeeding are high. That the court below had not applied the required standard of proof in election petitions. The Applicant also relied on Article 73(4) of the Constitution to argue that the petition has not yet been determined and she was entitled to continue holding her seat in Parliament.

On the other hand, arguments in favour of the 1st Respondent are that section 108(4) of the **Electoral Process Act**² is clear that following the nullification of the election, the Applicant could no longer claim to represent Lusaka Central Constituency. The 1st

Respondent also questioned the jurisdiction of the Court to grant the relief sought and that to do so would not only be prejudicial to the 1st Respondent, but would have the effect of an injunctive order against persons that are not party to the proceedings, and who were required to execute their constitutional duties following the nullification of a seat.

The Attorney General, for the 3rd Respondent, invited the Court to consider a number of constitutional provisions when exercising its discretion, notably Article 72(2)(h) of the Constitution. In his view a seat is only vacant following a decision of the Constitutional Court to that effect.

The arguments advanced by the parties raise the question in my mind as to what it all implies for this present application. But before addressing that, I wish to state from the outset that the principles relating to the granting of a stay of execution pending appeal are well settled. As can be seen from the submissions herein, I have been accorded the benefit of being reminded of the position of the law in regard to stays through citation of both local and foreign authorities. Courts in our jurisdiction and beyond are in unison on the applicable considerations when a party seeks to have the execution of a decision or judgment stayed. I hasten to state that I do not see it necessary for me to restate or go over what are otherwise well reasoned and sound principles. Accordingly, I have taken the liberty not to venture down the path of regurgitating what I believe to be the obvious.

That notwithstanding, after giving careful reflection to the arguments by learned counsel on all sides of the matter, and to the written submissions, I come only to one conclusion, that the parties have anchored their arguments on the provisions of the applicable or relevant law, the full interpretation of which is the preserve of this Court duly constituted pursuant to Article 129 of the Constitution. For obvious reasons, therefore, I decline the invitation to offer interpretation on the interplay of the various provisions of the law cited. That notwithstanding, it does not preclude me from simply noting what directly impacts this application. In that regard, I note that Article 72(2) of the Constitution addresses instances when the office of Member of Parliament becomes vacant. Of particular relevance to this application is Article 72(2)(h) where one can cease to be a Member of Parliament following a decision of the Constitutional Court.

My considered view is that I see no need to entertain this application for stay any further when, by operation of law and in terms of the Constitution, it is clear when a seat becomes vacant. One of those instances is when the Constitution Court makes a final determination on a seat that has been nullified. In the premises, I find this application for stay of execution of the judgment of the court below irrelevant because when there is an appeal, the law, as per constitutional provisions, has stated that the seat only becomes vacant after the final determination of the Constitutional Court.

For the foregoing reasons, the application for stay of execution of judgment pending appeal is accordingly dismissed. I urge the parties to focus on preparing for the hearing of the appeal so that the Court has the opportunity to bring the matter to a final determination.

Considering this application has raised important constitutional issues of a public interest nature, I order that each party bear their own costs.

A handwritten signature in blue ink, appearing to read 'E. Mulembe', is centered above a horizontal dotted line.

E. MULEMBE

JUDGE