IN THE HIGH COURT FOR ZAMBIA **2016/HP/1738**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

IN THE MATTER: **OF SECTIONS 1, 101, 103, 105 AND 267 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.**

IN THE MATTER OF: **THE HEARING OF THE PRESIDENTIAL ELECTION PETITION IN RELATION TO THE PRESIDENTIAL ELECTION HELD ON 11TH AUGUST 2016**

IN THE MATTER OF: **ARTICLE 28 OF THE CONSTITUTION**

AND

IN THE MATTER OF: **THE CONTRAVENTION OF ARTICLE 18 OF THE CONSTITUTION OF ZAMBIA**

BETWEEN:

HAKAINDE HICHILEMA **1st PETITIONER**

GEOFREY BWALYA MWAMBA **2nd PETITIONER**

AND

THE ATTORNEY GENERAL **RESPONDENT**

BEFORE HONOURABLE JUSTICE MR. MWILA CHITABO, SC

For the Petitioners: *Mr. R.M Simeza, SC of Messrs Simeza Sangwa & Associates;*

Mrs. Nelly Muti of Lukona Chambers

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Mr. H. Haimbe of Messrs Malambo & Company

Mr. Z. Sinkala of Messrs Muleza Mwimbu & Company

For the Respondent: *Mr. L. Kalaluka, SC – Right Attorney General*

Mr. J. simachela – Chief State Advocate

Major C. Hara – Deputy Chief State Advocate

Mr. F. Mwale – Acting Principal State Advocate

Mr. D. Kamfwa – Assitant senior State Advocate

R U L I N G

Legislation referred to:

1. *High Court Act, Chapter 27 of the Laws of Zambia*
2. *Judicial Code of Conduct No. 13 of 1999*
3. *Supreme Court Rules of England, (1999) Edition Vol. 1*
4. *Public Order Act Chapter 113 of the Laws of Zambia*
5. *Constitution of Zambia, Act No. 2 of 2016*

Cases referred to:

1. *William Harrington v. Dora Siliya (20110 2 ZR 253*

2. *Locabail UK Ltd v. Bayfiled Properties Ltd and another 2000 EWCA Civil 3004*
3. *Moses Mulenga v. The People (1979) ZR 268*
4. *John Kasanga and others v. Ibrahim Mumba and others (2006) ZR 7*
5. *Porter and another v. Magil (2002) 1 All ER 465*
6. *Gaston Kaoata v. The People (1974) ZR 471 SC*
7. *Citbank Natrustee v. Squire & others No. 6 – CVE 07/97/66*
8. *Major Lubinda Sawekema v. Watson N'gambi and Attorney General (2011) 2 ZR 143*
9. *Khalid Mohamed v. The Attorney General (1982) ZR 49*
10. *Wilson Masauso Zulu v. Avondale Housing Project Limited (1982) ZR 172*
11. *Winnie Zaloumis (suing as Acting National Secretary for MMD) v. Felix Mutati selected Judgmetn No. 280/2016, SCZ/8/156/2016 Appeal No. 106/2016*
12. *Gustav Kapata v. the People (1984) ZR 47*
13. *Mwalimu Simfukwe v. Evaristo Kasunga Appeal No. 50/2013*
14. *Winstone Chibwe & dipak Patel v. Zambia National Broadcasting Corporation 2014/HP/1996*
15. *Attorney General v. Law Association of Zambia (2008) 1 Zr 21*
16. *Hakainde Hichilema v. Edgar Chagwa Lungu and Davies Chama (in his capacity as Secretary General for Patriotic front) 2014/HP/2037*
17. *Mutembo Nchito and Attorney General 2015/Hp/358*

18. *Attorney general v. Nigel Kalonde Mutuna and another Appeal No. 88/2012, SCz/185/2012*
19. *Professor Geoffrey Lungwangwa 2016/HP/EP/*
20. *Hakainde Hichilema v. the Attorney General 2016/Hp/1735*
21. *The Chief Immigration Officer and 2 others v. John Eric Tolmay (2011) 2 ZR 1*

Other works and learned Authors

1. *Halsbury's Laws of England vol. 1 2001 at page 226 paragraph 97*
2. *Judicial Ethics Advisory Committee of Arizona Supreme Court Advisory opinion No. 89/02/1998*

This is an application for recusal and for an Order of transfer of the Petition pursuant to Section 23 (1) of the High Court Act[1] and section 5 (1) and 6 (2) of the Judicial Code of Conduct[2] and Order 30 Rule II of the High Court Rules[1], premised on two grounds namely:-

(i) That there is reasonable cause to question His Lordships impartiality in the matter on the ground of personal bias or perceived bias in his conduct of the proceedings and,

(ii) That His lordship cannot otherwise preside over this matter due to conflict of interest which disqualifies him from so deciding.

The application was supported by a joint forty two paragraphed affidavit deposed to by the Petitioners.

The essence of which were that

(1)The Court did not commence to hear the Petition on 15th and continue to the 17th and 18th of December, 2016 and as such prejudiced the Petitioners.

(2)That the Court was not entitled to write to the parties to express its concerns over the riotous behavior and rescheduling the date of delivering of Ruling following the hearing of the Petitioners preliminary objection to the Respondents application to raise preliminary issue which was heard on 15th December, 2017. That it was strange phenomenon for the Court to without being moved by any arty to author letters to the parties.

(3)That the Court by vacating the dates of hearing of 15th to 17th December, 2016 appeared to have made up its mind that the preliminary issue launched by the Respondent would be sustained and as such the Court's conduct demonstrated open bias.

(4)That the Court on the reading of its Ruling of 29th December, 2016 at page J. 45 (though the same was erroneously indicated as having been delivered on 29th November, 2016) had attributed the cause of the confusion to the Petitioners;

notwithstanding that there was no judicial inquiry as to who attended Court on that day and as such the Petitioners were not given an opportunity to be heard.

(5)That in respect of the incidence of 29th November, 2017, fault must be attributed to the judiciary itself who had absolute control over who entered the Court premises and ultimately gained access to the Court Room and that the persons that attended the proceedings were members of the public in this case which has attracted a significant level of public interest.

(6)That the Petitioners were not given an opportunity to address members of the public that had gathered outside Court premises on 15th December, 1016 resulting in the Zambia Police Service firing teargas into the crowd of people resulting in the "mayhem and chaos". That by attributing the incidence to the Petitioners the Court, they believe is being biased.

(7)That the Petitioners wrote to the Court to recuse itself on 22nd December, 2016 but the Court refused and instead it expressed its displeasure with the manner in which the request was made, namely by letter.

(8)That the Petitioners letter to Her Ladyship the Honorable Chief Justice dated 22nd December, 2016 complaining about the Courts apparent bias, his non recusal and demand for

constituting a penal of 3 Judges to hear the Petition has not been responded to.

(9) That the Petitioners also did file in a complaint with the Judicial Complaints Commission and on 22nd December, 2016 in respect of alleged Judicial misconduct which has not been replied to as at time of submissions on 12th April, 2017 but the same is pending hearing and determination.

(10) That the Petitioners believe that during the pendency of the complaint there exist a conflict of interest between the Court and the Petitioners.

(11) That the Petitioners quite disturbingly have come to learn about the affinity of the Court's close association with the late founder member of the Patriotic Front, whilst still in private practice and that the Court took instructions from the late Mr. Michael Chilufya Sata to act on behalf of that political party and its leader.

(12) That is a widely held perception in the community that the Court cannot be a fair arbiter in matters involving the Patriotic Front.

At the hearing of the recusal application Learned Senior Counsel for the Petitioners Mr. Haimbe indicated that he was relying on the Petitioners affidavit in support of their application.

He then made oral submissions, the gravamen of which were as follows:-

That the Court must be free of any perception by which its impartiality might reasonably be questioned. That in circumstances where such impartiality may reasonably be questioned, the Court may be disqualified to act in such cause or matter. It was his submission that proceedings should be conducted in such a manner that not only to preserve the integrity of the Court but also to ensure that justice is not only done but is manifestly be seen to be done.

He made reference to Section 3 (1) of the High Court Act[1] which provides for transfer of cases between Judges.

GROUND 1

It was submitted in respect of ground one that the Petitioners are aggrieved with the way the Court made certain conclusions that the Petitioners are such persons as will willfully disrespect directions given by the Court.

He submitted that the Court has revealed its mind that by its animosity towards the Petitioners. Reference was then made to the case of ***William Harrington v. Dora Siliya***[1] which alluded to the English case of ***Locabail UK Ltd v. Bayfield Properties Ltd and another***[2] in support of the proposition that a danger exists where there is animosity by Court with a member of the public and a Judge has expressed himself strongly as to bring his impartiality in

issue and as such recuse himself. In his view the lodging of a complaint to the Judicial Complaints Commission was evidence that there was bias arising from the perceived animosity by the Court.

He pointed to the Ruling of the Court dated 27th November, 2016 wherein strong views were expressed in respect of the conduct of the Petitioners.

Reference was also made to the cases of ***Moses Mulenga v. The People (1973) ZR 261***[3] which had made reference to the English case of ***Locabail v. Bayfield Properties Ltd [2000] EWCA CIV 3004***.[2]

Senior Counsel concluded by calling in aid the case of ***John Kasanga and others v. Ibrahim Mumba Goodwin***[4].

The summary of Learned State Counsel Mr. Simeza' submissions was that on the doctrine of "nemo – judex causa sua" that is one should not be a judge in his own cause reference was drawn to the Learned authors Halsbury's Laws of England[1].

Learned State Counsel then addressed the Court on how the issue of bias is approached and dealt with at Common Law in a 2 stage approach; firstly that either the adjudicator has direct pecuniary or proprietary in the matter or otherwise direct personal interest and may be regarded as a party to the action.

Secondly, by reason of a different form of interest, or by reason of conduct or behavior – in the former category the test an automatic

and irrefutable presumption is raised. In the latter category the test of bias is satisfied on the basis of the allegations.

Reference was then made to Section 6 (2) (a) of the Judicial Code of Conduct No. 13 of 1999

He also called in aid paragraph 99 of Halsbury's Law of England and in particular the following passage

> *"It is generally unnecessary to establish the presence of actual bias although the Courts are not precluded from entertaining an allegation, it is necessary to establish the appearance of bias. It is now established that a uniform test applies namely: - 'whether having regard to all the circumstances there appears to the Court considering the matter to be a real danger of bias'"*

And in paragraph 100

> *"An apparent bias may also arise because an adjudicator has already indicated partisanship by expressing opinions antagonistic or favorable to parties before him or has made known his view about the merits of the or because of his personal relationship with a party or for other reason"*

Reference was made to the letter exhibited in the affidavit and comments and conclusions drawn by the Court on the "mayhem" and chaos as evidence of bias against the Petitioners.

Reference was also made to the English case of ***Porter and another v. Magill***[5], where the Court stated:-

"The question is whether a fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased"

It was his submission that perceived bias may actually not infact be there and may not be proved, according to him, what is important is the mere perception of bias in the minds of the Petitioners who have demonstrated their perception of bias by filing a complaint with the Judicial Complaints Commission and also asked the Court to recuse itself from the proceedings.

It was pointed out that in the case of ***John Kasanga and others v. Ibrahim Mumba***[4], the Court observed that

"it is no answer for the Judge to say that he is infact impartial and he could abide by his judicial oath. What matters is individual perception of bases"

It was State Counsel's further submission that the Court ought not to have taken judicial notice of events that ought to have been established by ordinary judicial inquiry not merely as perceived by the Court.

He finally invited the Court in the interest of justice to recuse itself.

The Respondent countered the submissions.

The right Attorney General and State Counsel, Mr. Kalaluka opposed the recusal application by stating that the Petitioners were estopped from making the application as they had taken steps in the proceedings after becoming aware of the alleged bias

complained of in the Courts letter of 16th December, 2016 and the Ruling of 27th December, 2017.

He pointed out that subsequent to the said Ruling the Petitioners subjected themselves to the jurisdiction of the Court and on 9th March, 2017 they filed into Court and subsequently launched the present recusal application, clearly showing that the application was an afterthought. Reliance was placed on Order 2 Rule 1 of the Supreme Court Rules of England[3].

In his view the recusal order ought to be terminated on that score.

It was his alternative argument that in the event that the Court was to be of the view that the Petitioners application ought to be heard, argued and determined, then the argument is that the application is devoid of merit.

In respect of the complaint that the Court had vacated hearing dates which was to commence on 15th December, 2016, the Respondent had raised notice to raise preliminary issue, the Petitioners opted to file notice to object to the notice to raise preliminary application filed by Respondent.

The Court did not insist that the earlier application be heard but allowed the Petitioners to present their objection. The Respondent did not allege bias against the Court. The hearing of the Petition could not take off because the notice filed by the Petitioners had to be heard and it was heard and argued from 09:30 hours to 15:30 hours expressly. A Ruling logically had to be rendered.

In respect of complaint for the Court taking judicial notice of events that unfolded shortly after the Court rose on 15th December, 2016; it was the Right State Counsel's submission that the Court was entitled to take judicial notice of such events rightly or wrongly. He called in aid the case of ***Gastov Kapata v. the People***[6]. He pointed out that every time a Court makes an Order or adverse order against a party, that in itself ought not be the reason on which to anchor allegations of bias. That in any event, if the Petitioners were aggrieved of the Ruling they had recourse to appeal to a Superior Court.

As regards the charge that the Court had attributed the "mayhem" and chaos that erupted to the Petitioners, in his view the Courts comments were general.

In respect of the Petitioners submission that once a complaint is lodged with the Judicial Complaints Commission is filed then the Court should recuse itself; his reaction was that the Ruling of 27th December, 2017 by any stretch of imagination did not amount to biasness on the part of the Court and let alone a basis for automatic recusal.

On this score he called in aid the Judicial Ethics Advisory Committee of the **Arizona Supreme Court**, where the committee held that:-

> *"The mere fact a complaint has been made against a Judge alleging that the Judge is biased and cannot be impartial does not require automatic disqualification or recusal by the Judge.*

If this were so any party or Attorney will easily disrupt Court proceedings by filing a complaint"

Reference was also made to the American case of ***Citibank Natrustee v. Squire and others***[7], which upheld a similar view as expressed in the opinion above. It was his submission that the Court is not obliged to recuse itself, as doing so would create a precedence that will enable parties to raise even vexatious frivolous complaints against Judges with a view of securing recusal of Judges.

In respect of the indictment that the Court is a close associate of the late founder of the Patriotic Front Party; it was pointed out that died two years ago, two years before the facts of this case arose. In any event the Petitioners have not shown any evidence as to the association and that even if such association were said to be true, that has no relevance in the matter in which the proceedings are between the Petitioners and the Attorney General.

That even if it were true that the Court once represented the Patriotic Front whilst in private practice, the Patriotic Front is not a party to these proceedings and cannot therefore form a basis for recusal.

In respect of paragraph 40 of the Petitioners affidavit alleging that there is a perception in the legal community that the Court would not be a fair arbiter in matters involving the Patriotic Front, the matter does not affect the Patriotic Front. Neither has the

acclaimed perception been demonstrated by any evidence even by affidavit of a single legal practitioner attesting to the same.

He found no merit in this indictment.

He finally invited the Court to dismiss the application with the attending costs as the application was merely intended to cause embarrassment to the Court.

In respect of the ***Locabail UK Limited*** case[2], it was State Counsels and Right Attorney General's submission that the Petitioners have not demonstrated nor provided neither evidence of bias nor issues of credibility to be determined.

That the Court's in their ordinary course of business admonish parties routinely on diverse situations for example, non compliance with the Order for Directions, forum shopping inter alia. He finally submitted that Court should not be asked to recuse itself merely because a party has been admonished.

In reply, Learned State Counsel Mr. Simeza submitted that in respect of Order 2 Rules of the Supreme Court rules of England[3] a distinction must be drawn between matters touching on irregularity of proceedings, non compliance or application to set aside proceedings and does not encompass an application for recusal. It was his submission that an application for recusal can be raised at any time and the filing of an affidavit in opposition to the Respondents application to raise a preliminary issue is no bar to the present application.

In respect of the Ruling of 27th December, 2017, it was submitted that the Court had placed itself in a conflict of interest situation and as such cannot adjudicate on account of apparent bias being alleged by the Petitioners.

State Counsel Simeza then invited me to accept the proposal that by the Court recusing itself it will not be an admission of bias but merely an act intended to preserve administration of justice.

It was his further submission that the Judicial Ethics Advisory Opinion of the Arizona Supreme Court[2] even if it had been so pronounced therein, each case must be treated on its own merit.

He dismissed the Respondents case that paragraph 0 of the Petitioners affidavit was not proven, pointing out that it should be taken on the face of it and that the Patriotic Front is connected to the Government.

He concluded by submitting that the application is within the allowable provisions of the Judicial Code of Conduct[3].

I am indebted on the researchful industry of the Learned Senior Counsel and State Counsel involved in this matter and also I acknowledge the supporting team of Attorneys on both sides.

I must also acknowledge that the respective legal representatives demonstrated quality Advocacy in dealing with a fairly difficult task of addressing the Court in the face of allegations of recusal. It is delicate surgery that may cause anxious moments and I must admit sometimes it may cause some exasperation on the part of a Judge.

The Attorneys were courteous while robustly and fearlessly jealously, vibrantly and robustly advancing their respective clients' interest, but with particular care with the due courtesy to the Court.

My brother Dr. Matibini, SCJ (as he then was) had occasion to pronounce himself on the subject matter on a duty of legal practitioners need to protect clients interests in the case of ***Major Lubinda Sawekema v. Wtason N'gambi and the Attorney General***[8] as follows:-

> *"Holding 1* — *In every sphere of practice Counsel must be courteous to the Court and all those with whom he has professional dealings.*
>
> *Holding 2* — *Counsel is also required to promote and protect fearlessly and by all proper and lawful means, their clients interests, even at the pain of any punishment as long as the law permits it.*
>
> *Holding 3* — *Discourtesy to the Court amounts to contempt.*
>
> *Holding 4* — *Submissions by Counsel must be formal, informed, researched, reasoned, objective and temperate.*

On the outset, it must be stated that the burden of proving case in civil matters lies on the plaintiff or Petitioner. The Court of last resort had occasion to pronounce itself instructively and authoritatively on the matter in the case of ***Khalid Mohamed v.***

Attorney General [9]. His Lordship Ngulube DCJ as he then was put it this way:-

> *"An unqualified proposition that a plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A plaintiff must prove his case and if he fails to do so, the mere failure of the opponents defence does not entitle him to a judgment. I would not accept a proposition that even if a plaintiff's case has collapsed of its inanition or for some reason or other, judgment should nevertheless be given to him on the ground that a defence has failed"*

His Lordship had another occasion to pronounce himself on the same subject matter in the case of ***Wilson Masauso Zulu v. Avondale Housing Project Limited***[10], he put it this way:-

> *"I think it is accepted that where a plaintiff alleges that he has been wrongfully or unfairly dismissed, as indeed in any other case where he makes any allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to Judgment whatever may be said of the opponents case. As we said in the* ***Khalid Mohamed v. The Attorney General (1982) ZR 49***
>
> > *"Quite clearly a defendant in such circumstances would not even need a defence"*

I will now proceed to deal with the substantive application. I propose to deal with the affidavit evidence and contemporaneously discuss, deal and apply the law to the facts.

1) **Failure of commencement of hearing of Petition on 15th December, 2016**

The record will show that on 29th November, 2016, earliest dates of trial were agreed upon taking into account that the Respondent was to be in Ndola attending to the Supreme Court sessions set down for the first 2 weeks in December. Thus when the Respondent launched his application to raise preliminary issue on 7th December, 2016, the only available date was 15th December, 2016.

There was no application to abridge the time. On 14th December, 2016, the Petitioners filed their notice of objection to the Respondents notice to raise preliminary issue and insisted that their application be heard first, rejecting the proposal that they respond to the substantive application by the Respondent by way of response.

The Petitioners notice to object was thus heard and the parties submitted from 09:30 hours to 15:30 hours. In the course of submissions, the Learned State Counsel Sangwa informed the Court that he was ready with their 1st witness the Registrar of the Constitutional Court and sought guidance if in view of the application being argued the witness was likely to be heard. The Court guided that issues of notice to object by the Petitioners had determined.

As narrated, the submissions terminated at 15:30 hours. It was therefore not reasonably possible for the Court to deliver its Ruling forthwith on the Respondents hotly argued case with a host of authorities to consider and verify. An adjournment was inevitable and it was agreed that Ruling be delivered and published on 20th December, 2016 at 09:30 hours.

It is therefore not correct to allege that the Court on its own motion without consulting the parties vacated the agreed dates of hearing the Petition. This is deceitful. It is trite law that preliminary or interlocutory applications that might have the effect of terminating the proceedings have to be determined first.

2) **That the Court acted unconventionally by resorting to writing to the parties indefinitely suspending the delivery of the Ruling on the Petitioners notice to object to preliminary issue indefinitely**

The Petitioners have not cited any rule, order, authority or practice direction that proscribes or prohibits the High Court to communicate to the litigants and or their Advocates if represented. The Court has original jurisdiction and power within its mandate to adjudicate on matters before it. It has to take charge and control the proceedings before it.

The apex Court had occasion to pronounce themselves on the subject matter in the case of ***Winnie Zaloumis (in her capacity as Acting National Secretary for MMD) v. Felix Mutati and 3 others***[11], delivering the Judgment of the Court put it this way:-

".....he proceeded to take another application exparte to stay the exparte order discharging the injunction. The problem as we see it is threefold. Firstly, it demonstrates that the Judge did not take charge of the record before him and steer it properly to its logical conclusion directing and guiding the parties. He instead allowed himself to be driven by the whims of the parties, notwithstanding that the Rule of Court require that when matters are filed and allocated to a Judge they should be Court driven by way of a Judge giving appropriate directions in respect of applications before him. The rule that the Court should take charge of proceedings is not unique to Zambia. This is the case in England as well where the former House of Lords (now Supreme Court) observed as follows in the case of ***Ashmore v. Corp of Llyods [1992] 2 All ER 28***:-

> *'The control of proceedings was always a matter for trial judge and the parties were not entitled as of right to have their tried to a conclusion in such a manner as they deem fit"*

The observations in the **Zaloumis case** related relating to exparte and interparte stay applications in my view those remarks however aptly apply to the subject at hand.

Sight should not be lost of the events that unfolded shortly after the termination of proceedings on the fateful afternoon of 15th December, 2016; all hell broke loose, it was mayhem and total chaos. Portion of the Judiciary infrastructure was damaged and

other private property; teargas canisters were discharged and people were seen running in all directions including in corridors of Judges Chambers.

The Petitioners have not denied receiving the letter of 12th December, 2016, in which I had directed that the business to be transacted on 15th December, 2016 was strictly a chamber matter in line with Order XXX(1) of the High Court Act[1]. The letter had been written to both parties and lead State Counsel and the Right Attorney General and State Counsel. Nor have the Petitioners at any time disassociated themselves from the members of the public who formed part of the riotous crowd.

On the contrary, the Petitioners have placed themselves right at the scene of the High Court. They reveal in paragraph 7 of their affidavit that they were outside Court room 7 but they were not interfering with Court proceedings and that they were not allowed to address the members of the public who had gathered contrary to the direction that business at hand was strictly a chamber matter where the Petitioners and their supports or other members of the public were not supposed to attend or be bear by the chambers.

It will also be recalled as narrated in the Ruling of 27th December, 2016 that there was an incidence on 29th November, 2016 when rowdy members of the public not disclaimed as cadres or sympathizers of the Petitioners caused a disturbance resulting in the necessity to used police options to control rowdy crowds.

The Petitioners have not demonstrated that they and their supporters or members of the public who they were desirous and were about to address after the adjournment of the proceedings on 15th December, 2016 were regulation compliant with the Public Order Act, and if the necessary notice of the public gathering had been given to the Zambia Police Service.

The Court in the circumstances had no choice but to act decisively to deliver a message home that Court business is to be transacted in tranquil and pacific environment or habitat to preserve the integrity and dignity of the Courts of our land.

I therefore make no apology for taking the action I took of informing the parties that the Ruling would be delivered on a date to be notified to the parties once it was demonstrated that Petitioners would manage their supporters or cadres or members of the public who gather at the instance of the Petitioners.

The precautionary measure taken to protect the potential harm to public infrastructure and private property is in public interest and Courts should not wait until harm came the way of the judicial officers and members of staff.

The issue of public interest was considered in the case of ***The Chief Immigration Officer and 2 others v. John Eric Tolmay***[21] where her Ladyship Madam Justice Chibomba of the apex Court (as she then was) had this to say:-

"As much as we agree that the Minister has power under Section 26 (20 of the Act to deport any person, the authorities cited, not any from Zambia, but also from England show that great as the public interest is, justice must nevertheless be done to the individual. There are however situations where the individuals rights may nevertheless take second place as stated in the case of R v. Secretary of State for Home Affairs exparte Hossenball [1977] 1 WLR 766"

My hands are shackled by the above pronouncement. The private and public rights of the citizens to accessibility to Court premises will take back stage if the presence and conduct of the members of the public becomes incompatible with good public order.

I therefore find no merit on this count against the Court.

3) **That the Court by vacating the dates of hearing of 15th to 17th December, 2016 appeared to have made up its mind the Respondents preliminary issue raised would succeed and as such demonstrated bias.**

There is absolutely no substance in this indictment. This is so firstly because the Respondents notice to raise the preliminary issue has not been argued and secondly the Court has not made any comment to tend to suggest that the respondents notice to raise preliminary issue would succeed.

4) **That the Court on the reading of its Ruling of 29th December, 2016 had attributed the cause of confusion to the Petitioners not withstanding that there was no judicial inquiry**

I have already alluded to this complaint in one of the preceding paragraphs and explained the circumstances that led to the comments complained of in the Ruling. Suffice it to state that the Court was entitled to take judicial notice of matters which were within the personal knowledge and indeed in public domain which were notorious and were unfolding before the eyes of the Court, and the Court had to take necessary precaution like other judicial officers and staff to lock itself in the chambers being room 59 then with the marshal and the secretary as they watched through the window in the easterly direction that has a vintage view point of the Judges car park, as the police were trying to control the rowdy mob and apprehended some. It did not therefore need a judicial inquiry for the Court to comprehend what was happening as it witnessed part of the intimidatory drama.

The apex Court has had occasions to pronounce itself on judicial notice in a myriad of authorities one of which is in the case of ***Gustav Kapata v. The People (1984) ZR 47*** Silungwe CJ as he then was had this to say on Judicial notice:-

> *"Holding 1 In so far as the utilization of personal knowledge is concerned, the general rule is that a Court may, in arriving at its decision in a particular case act on its personal*

knowledge of facts of general nature, that is notorious facts relevant"

If the Petitioners were aggrieved by any portion of the ruling complained of they had an automatic right of appeal to the Superior court. There is no substance nor merit in this complaint.

5) **That in respect of incidence of 29th November, 2017 fault must be attributed to the Judiciary itself who had the control as to who would have access to the Court premises**

The fact that the Judiciary may have some form of control as to access the court premises and courts is no excuse to justify the rowdy behavior which understandably obliges the police service to swiftly move in to contain the situation to protect property and persons who happen to be at the Court premises and effectively bring under control any desperate situation.

There is no merit in this proposition.

6) **That the Petitioners were not given an opportunity to address the members of the public that had gathered outside Court premises on 15th December, 2016, resulting in the Zambia police service firing teargas into the crowd of people resulting in "mayhem' and chaos. That by attributing the incidence to the Petitioners, the Court, the Petitioners believe the Court is being biased**

I have already dealt with this matter in one of the preceding paragraphs, save to add that by not heeding the directive of the

Court that the Petitioners and the members of the public were not to attend the chamber matters as ordained by the legislature, the Petitioners had manifestly demonstrated that they did not want to co-operate with the Court.

There is no merit in this claim.

7) **That the Petitioners wrote to the Court to recuse itself on 22nd December, 2016 but the Court declined to do so but instead expressed its displeasure with manner in which the request was made by letter**

I have combed the Judicial Code of Coduct[2] and the Article 144 of the Constitution[5], the latter of which interalia pronounces the functions of the Judicial Complaints Commission. I have found no proviso to the effect that once any allegation is made against a Judge alleging breach of any provisions of the Judicial Code of Conduct or breach of the provision of the Constitution, the affected Judge shall forthwith recuse himself from taking any further action in the proceedings. That is the wisdom of the legislature. My function is to obey the law, interpret it and apply it.

The only final court of resort then, (the Supreme Court) had occasion to pronounce itself on the issue of Judges duty to apply the will of the legislature. This was in the case of ***Attorney General v. Dora Siliya (femme sole) and 2 others SCZ Judgment No. 17 of 2015, Appeal No. 208/2013*** where his Lordship DCJ Mervin Sitwala Mwanamwambwa reading the

Judgment of the Court instructively and authoritatively observed at page J33 as follows:-

> *"In the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactment. In this field, Parliament makes and unmakes the law and the Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. If the result be unjust but inevitable, the Judge may say so and invite Parliament to consider the position. But he may not deny the statute, unpalatable statute may not be disregarded or rejected merely because it is unpalatable.*

See Duport Steels Ltd v. Sirs [1980] 1 WLR 142 and 168

Lord Denning is of the same view. In ***Deeble v. Robinson (1953) 2 All ER at p. 1357*** *he said*

> *"When Parliament has been specific we are not at liberty to depart from it"*

Further to give effect to the subject or purpose of a statute, all provisions bearing on a particular subject ought to be brought into view and interpreted together. See (a) ***State v. Petrus and another [1956] LRC***. *(b)* ***Rafliu Rabiuv v. S 1981 2 NCL R 293*** *(c)* ***South Dakota v. North Carolina (1940) 192 USA 268: 48ED 446 at p. 465***

8) **That the Petitioners letter to Her Ladyship the Honourable Chief Justice dated 22nd December, 2016 complaining about**

the Courts apparent bias and demand for a constitution of a panel of three Judges has not been responded to

The Court is not in a position to comment on that indictment taking into account that I do not have the slightest iota of authority to matters which are of the Constitutional preserve of the Chief Justice.

To this end I only need to refer to Article 136 of the Constitution of the Realm[5], which provides as follows:-

'Art 136 (1) There shall be a Chief Justice who is the head of the Judiciary

(2) The Chief Justice shall

(a) Be responsible for the administration of the Judiciary

(b) Ensure that a Judge and Judicial officer perform the judicial functions with dignity and integrity

(c) Establish procedures to ensure that a Judge and judicial officer independently exercise judicial authority in accordance with the law

(d) Ensure that a Judge and judicial officer perform the Judicial function without fear, favour or bias; and

(e) Make rules and give guidelines necessary for the efficient and effective administration of the Judiciary

I can only but say the guns that have been turned on this Court should be directed at the highest institution of the Judiciary constituting the office of the Honourable, the Chief Justice.

The indictment under this limb is destitute of any merit.

9) **That the Petitioners also did file in a complaint with the Judicial Complaints Commission on 22nd December, 2016 in respect of alleged judicial misconduct which has not been replied at the time of submissions on 12th April, 2017 but the same is pending hearing and determination**

Like in the immediate preceding paragraph, I confess I am not clothed with any cloak of authority to comment on constitutional preserves of the Judicial Complaints Commission. The indictment formed against this Court under this limb is obviously misaimed; the Petitioners guns have wrongly been targeted.

This limb too is destitute of any merit.

10) **That the Petitioners believe that during the pendency of the complaint, there exists a conflict of interest between the Court and the Petition**

I do not agree. Firstly, on the ground that the predicament in which the Petitioners find themselves in is self inflicting. They opted to launch an application for recusal instead of appealing

against the Ruling. The result is that I have to deal with the matter on the merit and if I find merit in the indictment, I should gracefully or disgracefully recuse myself.

Secondly, if the Petitioners have one tracked subjective perception that the Court is biased, then it goes without saying that the Court should not even preside over this recusal application which may result in absurdity. This result ought not to be reached upon because the Petitioners having launched the recusal application in the event that it collapses, they will still have their day or days in the Superior Courts.

Thirdly, I acknowledge the doctrine of nemo judex ne causa sua that one should not be a Judge in ones cause.

This is a unique situation, the Petitioner has placed the Court in this position where the Court should answer to the serious issues leveled against it which include inter alia allegations of breach of the Constitution or Judicial misconduct which arraignments have dire consequences which under Article 143 (b) of the Constitution[5] states:

> *"A Judge shall be removed from office on the following ground*
>
> *(a).....*
>
> *(b).....*
>
> *(c) Gross misconduct*

It will therefore be folly for the Court to gloss over the allegations and take them lightly. I do not therefore agree with respect to State

Counsel Simeza when he ingeniously contrives an invitation to persuade me to quickly recuse myself suggesting that a recusal in the circumstances will not amount to an admission of guilt of misconduct. That is far from the truth. Infact the opposite is true that once an admission of bias is admitted on the face of it without critical critique in law that will amount to a well proven confession.

Breach of Constitutional provisions is as I have said a grave punishable transgression with summary dismissal upon recommendation by the Judicial Complaints Commission in line with the Article 144 of the Constitution[5] which provides for procedure for removal of a Judge.

I refuse t fall in the snare of entrapment contrived ingeniously by State Counsel. The invitation is declined.

11) **That the Petitioners quite disturbingly have come to learn about the affinity of the Court's close association with the late founder member of the Patriotic Front whilst in private practice and that the Court (then a legal practitioner) took instructions from the late Mr. Michael Chilufya Sata to act on behalf of that political party**

The starting point is that the Petitioners have not disclosed the source of their information. Since they have not deposed to the facts within their knowledge, this offends Order 5 (15) of the High Court Rules[1].

Paragraph 40 is therefore expunged from the affidavit.

Additionally, the matters deposed to on the basis of the Petitioners affidavit offends the rule against hear say evidence. On that score too the offending paragraph would be expunged and if not expunged has absolutely no probative or evidential value. The prejudicial effect on the Court on the other hand will be immense if it were to be said that notwithstanding the irregularity as to form the Court may invoke provisions of Order 5 Rule 13 of the High Court Rules[1] to allow the offending paragraph or paragraphs to stand. In my view this not a fit and proper case to exercise such discretion.

The burden of proof as enunciated in the ***Khalid Mohamed v. Attorney General's*** case[9] and ***Wilson Masauso Zulu v. Avondale Housing Project Limited***[10], it is up to Petitioners to prove their allegations.

The standard of proof in civil matters ordinarily is on the balance of probability. In petitions the standard of proof is higher than that obtaining in ordinary civil matters but not as high as that obtaining in criminal matters.

In my view and by way of obiter dicta allegations of gross constitutional misconduct, breach of the Constitution is a grave indictment which ought to be proved beyond all reasonable doubt.

This said however, this Court being a Court of equity it has no difficulty in stating that it acted for the late Mr. Michael Chilufya Sata in one civil matter of ***Webster Chipili v. Michael Chilufya Sata***. It emanated from a Mufulira local court in a defamation of

character case. I was called upon to defend in the subordinate long before Mr. Sata became president.

I deny per se acting for the Patriotic Front but admit having acted for some individuals who might have associated to the Patriotic Front, just as I had acted for some other persons who had associations with other political parties like United Nations Independence Party and the MMD.

A psynopsis of a few cases discloses the following state of affairs. This is necessary so that a fair minded person would form an informed opinion if there is basis to allege bias. When the Patriotic Front formed government and Mr. Sata was the sitting president, I acted for Hon. Mwalimu Simfukwe in the case of ***Mwalimu Simfukwe v. Evaristo Kasunga***.[13]

The appellant was the winning candidate for Mbala constituency on MMD ticket. His election was nullified. I acted for the Appellant against the Patriotic Front. That was the last case I should add with humility that I successfully argued before the Supreme Court before crossing the Bar and obtaining letters patent.

(i) On the Bench I have dealt with some matters affecting the Petitioners, Winstone Chibwe & Dipak Patel v. ZNBC, on 19th December, 2014 in which I granted an exparte injunction in favour of the Applicant who were suing on behalf of the Petitioners party directing the Zambia National Broadcasting Corporation, a Government public broadcaster directing the Defendant to give fair coverage to the party United Party for

National Development (UPND. The action had come by way of Petition. There was no allegation of bias notwithstanding the claims now that the Court had close relations with the founder member of the Patriotic Front.

The injunction however had to be discharged on 7th January, 2015 upon interparte hearing on the ground that under Article 28 (1) of the Constitution the High Court had no power to grant interim injunction on the authority of ***Attorney General v. law Association of Zambia[18] (2008) 1 ZR 21***.

There was no appeal against that Ruling.

(ii) ***Hakainde Hichilema and Edgar Chagwa Lungu, Davis Chama (in his capacity as Secretary General for the Patriotic Front) 2014/HP/2037***

In that case on 24th December, 2014, I granted an injunction in favour of the 1st Petitioner restraining the 3rd Defendant from publishing material alleging that the Plaintiff was a masonist and canabalist who would be devouring children if he was elected president.

(iii) ***Mutembo Nchito and Attorney General 2015/HP/358***

On 11th March, 2015, I granted exparte a stay of the swearing in of the tribunal appointed by His Excellency Mr. Edgar Chagwa Lungu to inquire into the alleged conduct or misconduct of the then Director of public prosecution. The matter came by way of judicial

review. The grounds were that there was reasonable apprehension that the appointment of the tribunal by the President of the Republic of Zambia touching on the conduct of the DPP was likely to affect the proceedings which were active in the High Court and Supreme Court. The situation may have the undesired effect of the Executive arm of Government interfering in the independence of the Judiciary in respect of matters pending before the Courts.

The exparte Order was on 14th March, vacated on the basis of a superior precedence as set in the case ***Attorney General v. Nigel Mutuna and 2 others***[21], which by a close majority decision held that, the President had unfettered discretion with residual power to make executive decisions. I must acknowledge the powerful dissenting opinion spearheaded by his Lordship Mervin Mwanamwambwa JS (as he then was) to the contrary.

(iv) ***Samuel Mukwamatama Nayunda v. professor Goeffrey Lungwangwa 2016/HP/EP 0018***

Where this Court had no difficult in dismissing the Petitioners Petition who had stood on Patriotic Front ticket on the ground that the Respondent had inflicted a heavy defeat on his harpless opponent and as such the majority will of the electorate had to be respected and upheld.

There was no allegation of any alleged bias before or during the hearing and determination of the Petition.

(v) ***Hakainde Hichilema and another v. The Attorney General (in this very cause)***[23]

On 7th September, 2016, the Court delivered 2 Rulings. The first one the Court dismissed the Attorney Generals application that the petition herein be dismissed on account of frivolous and vexatious litigation.

In the second Ruling, I declined to grant a conservatory order to restrain the inauguration of the President of the Republic of Zambia and his vice President Lady Inonge Wina on the ground that an interim relief is not available if mode of commencement is by way of Petition under Article 28 of the Constitution of Zambia and in the authority of the ***Attorney General v. Law Association of Zambia***[18].

On appeal the Court's decision was upheld.

(vi) ***Aaron Mulope and Steven Katuka (sued in his capacity as Secretary General of the UPND) Dr. Maureen Mwanawasa, Sylvia Masebo and Electoral Commission of Zambia 2016/HP/1196***

On 16th July, 2016, I declined and dismissed application by the Plaintiff to nullify the adoption of Dr. Maureen Mwanawasa by the 1st Petitioners party because adoption process is an internal party matter.

On the foregoing resume and catalogue of the judicial memory lane, can a fair minded person overlooking this case form an opinion that the Court is biased? I think not.

I will now proceed to deal with all remaining legal issues raised by the parties that might not have been dealt with in the preceding paragraphs.

(1) **Waiver of raising recuse application**

It was sought by the Respondent to terminate and torpedo the Petitioners application on the basis of Order 2 Rule 2 of the Rule of the Supreme Court on the ground that the Petitioners did not launch their application promptly and timeously when they became aware of the alleged bias or conflict of interest of the Court.

It was pointed out that by submitting to the jurisdiction of the Court as demonstrated by filing an affidavit in opposition to the Respondents notice to raise preliminary issue, the former head waived their right to launch their present application.

The Petitioners countered this submission.

It was submitted that Order 2 (1) relied upon relate to applying to set aside proceedings for irregularity and not in respect of applications like the present one for recusal.

They pointed out that a party is entitled to foster a recusal application at any stage of the proceedings.

I agree with the Petitioners submissions that Order 2 of the Rules of the Supreme Court Rules of England indeed envisages applications relating to setting aside irregular Judgments or proceedings.

I also agree that an application for recusal may be launched at any stage of the proceedings since it goes to jurisdiction of the Court.

The Right Attorney General's application is denied.

(2) **Allegation of bias**

The gist of the submission on this limb by Senior Counsel Haimbe was that where there was apparent animosity there was a real danger of bias. In buttressing his ground, he made reference to the case of ***William Harrington v. Dora Siliya***.

What Counsel omitted to place before the Court was the holding in that case in holding number 7 where Mwanamwambwa JS (as he then was) held as follows:-

> *"There is an increasing tendency by litigants and their Advocates to make unwarranted personal imputations of bias against judges when they lose cases. Imputations of bias should not be lightly made against a Judge. T hey should only be made in clear situations"*

The Court of final resort had occasion to pronounce itself on the subject of selective reference to authorities. This was in the case of ***Zambia Revenue Authority and Post Newspapers Limited (Appeal No. 114/2014 [2014] ZM SC 37 1st April, 2014)***

His Lordship Mwanamwambwa DCJ pronounced himself in the following fashion after referring a submission by State Counsel quoting from an authority to the effect that:

> *"Nowadays the Court may be prepared (**provided that the appeal has sufficient merit**) to grant a stay, even where that test is not satisfied, if enforcement of the Judgment under appeal would result in the Post House being sold or business being closed down:-"*

His Lordship then observed thus:-

> *"But we note that in quoting this passage (Mr. Nchito) omitted the words 'provided that the appeal has sufficient merit'. The omission was deliberate for the State Counsel to sieve out key element of a quoted passage just because it is against his client's case. Authorities must be quoted in full and truthfully"*

Senior Counsel to buttress his point on bias summoned the case of ***John Kasanga and another v. Ibrahim Mumba and 2 others (2006) ZR 7***. He emphasised that the issue in determining whether a Court ought to recuse itself actual bias need not exist but merely the perception in the right minded person that bias is likely to happen.

The submission is legitimate so far as it goes. What Counsel omitted was to refer to the conclusion by the apex Court where his Lordship Chirwa JS (as he then was) observed as follows:-

"We recognise that it is the individual perception of biasness. On the facts and circumstances of this case there was no basis on which the Learned trial Judge could have recused himself. The appeal is dismissed with costs".

What Senior Counsel conveniently elected to suppress was the ingredient there must be basis in addition to the perception of the applicant.

This practice as already alluded to has been disapproved byt eh apex Court and it is hereby also disapproved only by way of reinforcement.

The Court of final resort also had occasion to pronounce itself yet in another case on the issue of bias in the case or ***Priscilla Mwenya v. Attorney General and another (2007) 1 ZR 7*** where Mushabati JS (as then was) had this to say at page 20 lines 13 – 33

"We wish therefore to distinguish this case from our earlier decision in the case of ***Zambia Communications Company Limited v. Celtel Zambia Limited (2008) ZR 44****. In that case, the Chairman of an arbitral tribunal was appointed to another tribunal by one of the Advocates appearing before him in a tribunal. He did not disclose this fact to the opposing party. As soon as this was known to the other party the award rendered was challenged on the reason of non disclosure of interest by the chairman. We held in that case that it was possible for a fair minded and informed person to have concluded that the Chairman's failure to disclose his interest*

was in conflict with public policy and the possibility of bias could not be ruled out.

In the case in casu, I have delved in the complaints or indictments preferred against the Court. I have microscopically dissected the same, analysed them and found no basis to sustain even remotely the charges of bias.

If the argument by the Petitioners that the acclaimed affinity with the founder member was an open affair amongst the legal fraternity that includes the team of the two eminent State Counsel and other distinguished Senior members of the Bar; and if as demonstrated with this knowledge the Petitioners found no cause to challenge the Courts impartiality and the Court has presided over a number of their cases since December, 2014, the only irresistible inference and conclusion is that there does not exist any basis upon which to anchor the complaint and demand for recusal.

Learned State Counsel Simeza after referring to a number of authorities which included the case of ***Locabail Street Metropolitan Stipendiary Magistrate and others exparte Pinochet Ugarte (No. 2)*** submitted that what was detriment in a recusal application is simply the perception of the Petitioner. That is what the petitioner thinks.

The Right Attorney General Mr. Kalaluka in countering that submission pointing out that that cannot be the position. It was his argument that if Petitioners position would or indeed litigants would make any frivolous or vexatious allegation which will

automatically result in the presiding Judge vacating the proceedings.

There is a lot of force in this submission. I do not accept the proposition that all what a litigant has to do to secure a recusal is to make any allegation whether spurious, vexatious, frivolous, scandalous or otherwise not supported by any iota of evidence. Such casual management of the Court system will have an escalation of forum shopping and will have the undesired effect of weakening the integrity of the Courts.

Editorial note paragraph 18/19/18 of the Rules of the Supreme Court is instructive as to what amounts frivolous and vexatious; it guides as follows:-

> *"That the categories of conduct rendering a claim frivolous, vexations or an abuse of process are not closed but depend on all relevant circumstances and for this purpose, consideration of public policy and the interests of justice may be very material"*

I hasten to state that, legitimately aggrieved litigants will always have their day in Court if their complaints are well anchored.

It was submitted by State Counsel Simeza that the Court should pay little or no attention to the American authorities of

(1) Arizona Supreme Court (Judicial advisory Committee) advisory opinion 98 -02 of 1998; and
(2) Judicial Inquiry Commission of Alabama

since they are of foreign jurisdiction and the context in which they were pronounced are not known.

To interrogate this submission, I visited the case of ***C & S Investments Limited and 2 others v. Attorney General (2004) ZR 216 SC***, wherein Her Ladyship Madam Justice Mambilima, JS (as she then was) succinctly pronounced herself on the status of authorities from foreign jurisdictions. She put it this way in holding number 2:-

> *'Whilst cases cannot be decided on the basis of foreign law, the legal position prevailing in other jurisdictions is helpful to enable the Court look at issues objectively from a wider base"*

To investigate whether the American authorities are relevant, we have to look at complete text of the Judicial Code of Conduct No. 13 of 1999. The relevant sections provides as follows:-

> *"Section 6 (1) notwithstanding, Section Seven a judicial officer shall not adjudicate on or take part in any consideration or discussion of any matter in which the officers spouse has any persona; legal or pecuniary interest whether directly or indirectly.*
>
> (3) *A judicial officer shall not adjudicate or take part in any consideration or discussion of any proceedings in which the officers impartiality might reasonably be questioned on the grounds that:*

(a) The officer has a personal bias or prejudice concerning a party's legal practitioner or personal knowledge of the facts concerning proceedings;

(b) The officer served as a practitioner <u>in the matter</u> (underlining mine);

(c) A legal practitioner with whom the office previously practiced law or served is handling the matter;

(d) The officer has been a material witness concerning the matter of a party to the proceedings;

(e) The officer individually or as trustee, or the officers spouse, parent, child or any other member of the family;

(f) A person related to the officer or spouse of the officer

(i) Is a party to the proceedings or officer or director or trustee of a party;

(ii) Is acting as a legal practitioner in the proceedings;

(iii) Has any interest that could interfere with a fair trial or hearing, or

(iv) Is to the officers knowledge likely to be a material witness in the proceedings.

Section 5 provides as follows:-

"5 (1) Subject to section six a judicial officer shall not hear and determine any matter assigned to the officer except a matter which the officer is by law not competent to hear or determine.

(2) *A judicial officer shall not in the performance of adjudicative duties be influenced by*

(a) *Partisan interest, public clamor or fear of criticism;*

(b) *Family, personal, Social, political or other interest; or*

(c) *Any other circumstances otherwise than that provided by law.*

(3) *A judicial officer shall not use the office of the officers position to advance any private interest of the officer, the officers spouse, child, relation or other person or make any person believe that the officers spouse, child or relation or other person is in a position to influence the officer in any manner.*

(4) *A judicial officer testify as a character witness before a court.*

The passage complained of by the Learned State Counsel Simeza in respect of the Judicial Advisory Committee of the Supreme Court of Arizona is as follows:-

> *"The mere fact that a complaint has been made against a Judge alleging that a Judge is biased and cannot be impartial does not require automatic disqualification or recusal by the Judge. If this were so, any party or Attorney could easily disrupt proceedings at any time disrupt Court proceedings by filing a complaint".*

The commentary is relevant to the case in casu, whilst acknowledging the observations by the Learned State Counsel Mr. Simeza, suffice it that this Court is not bound by decisions emanating from foreign jurisdictions. At the most they are merely persuasive or highly persuasive depending on the hierarchy of the Court in the native foreign jurisdiction.

On the foregoing and in conclusion, I hold that the Petitioners have palpably failed to establish their indictment of bias, animosity, prejudice or other charges. The application fails and it is hereby dismissed.

Meanwhile, the case comes up on 16th May, 2017 at 10:00 hours for setting date for hearing of the Respondents notice of intention to raise preliminary issue.

Ordinarily the costs follow the event. It is however not the custom this Court to award itself costs. This matter is indeed of tremendous public interest. The justice of the case is that each party bears its own costs.

Leave to appeal is granted.

Delivered under my hand and seal this 24th Day of April, 2017

Mwila Chitabo, SC
Judge