

IN THE CONSTITUTIONAL COURT
HOLDEN AT LUSAKA

2017/CCZ/009

IN THE MATTER OF: ARTICLES 20 AND 21 OF THE CONSTITUTION
OF THE REPUBLIC OF ZAMBIA

AND

IN THE MATTER OF: ALLEGED CONTRAVENING OF ARTICLES 20
AND 21 OF THE CONSTITUTION OF THE
REPUBLIC OF ZAMBIA

BETWEEN:

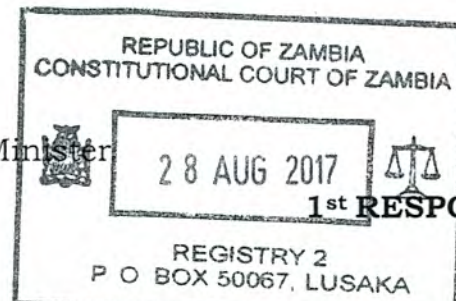
WICKSON MWENYA

PETITIONER

(Petitioning in his capacity as Secretary General
of the Zambia Nation Students Union)

AND

NKANDU LUO (sued in her capacity as Minister
of Higher Education)



ATTORNEY GENERAL

2nd RESPONDENT

Before the Honourable Mr. Justice P. Mulonda, in Chambers held on 23rd
August, 2017 at 10:00 hours

R U L I N G

This ruling follows a petition filed in the Constitutional Court on the 17th
August, 2017 by Wickson Mwenya in his capacity as Secretary - General
of the Zambia National Students Union. The 1st Respondent Nkandu Luo
is sued in her capacity as Minister of Higher Education while the 2nd

Respondent is the Attorney General. The petition is brought pursuant to **Order 4 Rule 1 of the Constitutional Rules 2016.**

In the petition, the petitioner alleges that the 1st respondent has on several occasion stated, threatened or declared the ban of student unionism activities and has since banned such activities at Mulungushi University and the University of Zambia.

The petitioner further alleges that the action taken by the 1st respondent amounts to a denial and suppression of the students freedom of expression contrary to **Articles 20 and 21 of the Republican Constitution.**

Before this matter could proceed for scheduling, I did direct that the petitioner addresses the Court on the issue of jurisdiction.

It was the petitioner's argument that this Court is clothed with the requisite jurisdiction to hear the matter.

In response, Ms. Shamabobo counsel from the Attorney General's Chambers stated that **Article 28 of the Constitution** was clear as regards enforcement of articles falling under the Bill of Rights which jurisdiction is assigned to the High Court. **Article 28 provides:-**

(1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall --

- (a) hear and determine any such application;
- (b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2); and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive."

It was her submission that the Constitutional Court has no jurisdiction to hear the matter. In augmenting Ms. Shamabobo's submission, Mr. Mwale also from State Chambers, submitted that the provisions of **Article 128 of the Constitution** clearly state the Court's jurisdiction which is subject to **Article 28 of the Constitution**. **Article 128 (i) provides that:-**

- "1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear—
- (a) a matter relating to the interpretation of this Constitution;

- (b) a matter relating to a violation or contravention of this Constitution;
- (c) a matter relating to the President, Vice-President or an election of a President;
- (d) appeals relating to election of Members of Parliament and councillors; and
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court."

In reply, the petitioner, while reciting the respondent's submissions applied for an adjournment to seek legal representation. However, this application came late in the day and as such was not entertained.

Having heard both parties on the issue of the Court's jurisdiction to hear the petition, I agree with Counsel for the 1st and 2nd respondents that **Article 28 of the Constitution** is clear in so far as enforcing rights and freedoms under the Bill of Rights is concerned.

I therefore, dismiss this petition for want of jurisdiction and as it is a proper matter for the High Court's Constitutional jurisdiction.

Each party will bear its own costs.



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P. Mulonda

CONSTITUTIONAL COURT JUDGE