

**IN THE CONSTITUTIONAL COURT OF ZAMBIA 2021/CCZ/0015
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)**

**IN THE MATTER OF: Articles 1(5) and 128(1)(a) of the
Constitution of Zambia, Chapter 1 of
the Laws of Zambia**

**IN THE MATTER OF: The interpretation of Article 70(1)(d)
of the Constitution of Zambia,
Chapter 1 of the Laws of Zambia**

AND

**IN THE MATTER OF: Order IV Rule 2(2) of the
Constitutional Court Rule, SI No. 37**

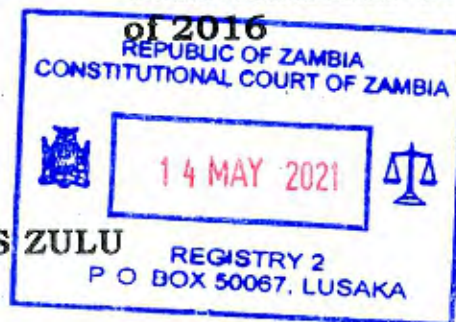
BETWEEN:

CHARLES MATHIAS ZULU

AND

ELECTORAL COMMISSION OF ZAMBIA

ATTORNEY GENERAL



APPLICANT

1ST RESPONDENT

2ND RESPONDENT

**CORAM: Mulenga, Munalula, Chitabo, Chisunka and
Mulongoti, JJC on 14th May, 2021.**

*For the Applicant: Mr. K. N. Simbao and Ms. N. Nambao of Messrs Mulungushi
Chambers*

For the 1st Respondent: Mr. B. M. Musenga, Commission Secretary

For the 2nd Respondent: *Mr. J. Simachela, Chief State Advocate*
 Mr. P. Kachimba, Principal State Advocate
 Mr. I. Nyambe, Principal State Advocate
 Ms. N. Lungwe, Senior State Advocate
 Ms. S. Mofya, Assistant Senior State Advocate
 Mrs. N. Malilwe, State Advocate

R U L I N G

Mulongoti JC, *delivered the Ruling of the Court*

Case referred to:

1. *Bizwayo Newton Nkunika v Lawrence Nyirenda and another 2019/CCZ/005*

Legislation referred to:

1. *The Constitution of Zambia Chapter 1 of the Laws of Zambia*
2. *The Constitutional Court Rules Statutory Instrument No. 37 of 2016*

The Ruling pertains to the Notice of Motion to raise preliminary issues by the 2nd respondent pursuant to **Order 14A and Order 33 rule 3 of the Rules of the Supreme Court of England, 1999 edition as read with Order I of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016.**

The background giving rise to this Motion is that the applicant, by ~~Originating Summons~~, moved the Court seeking interpretation of **Article 70 (1)(d) of the Constitution of Zambia as amended by the**

Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution).

The questions raised for the Court's determination being—

- a) *Whether, having regard to the Constitutional Court's Judgment delivered on the 10th day of March, 2021, 2019/CCZ/005 the pronouncement by the Electoral Commission of Zambia at its media briefing held on the 17th March, 2021 addressed by the Chief Electoral Officer that... tertiary qualifications such as a trade certificates, diploma or university degree are not equivalent to a grade 12 certificate and therefore will not be separately accepted without a grade twelve (12) certificate...”, is in breach of the Constitution considering that a grade twelve (12) certificate or its equivalent is the minimum academic qualification required for a candidate;*
- b) *Whether a person who possesses a qualification that is higher than a Grade 12 Certificate or its equivalent is ineligible to be elected as a Member of Parliament on account that he or she does not possess the minimum Grade 12 Certificate or its equivalent; and*
- c) *Whether the Electoral Commission of Zambia should make a blanket interpretation as to what amounts to the equivalent of a Grade 12 Certificate or and that no tertiary qualification can at all be equivalent to a grade 12 Certificate.*

The 2nd respondent subsequently filed this Motion raising the following preliminary issues:

- 1. Whether the interpretation of Article 70 (1)(d) of the Constitution of Zambia Act No. 2 of 2016 being sought in the current Originating Summons is res judicata on account of the Judgment of this Court in the case of *Bizwayo Newton Nkunika v Lawrence Nyirenda and another*¹ and therefore should be dismissed with costs; and**
- 2. Whether this Honourable Court is wanting in jurisdiction as it is functus officio having pronounced itself on the subject of the litigation herein in the case of *Bizwayo Newton Nkunika v Lawrence Nyirenda and another*¹?**

The Motion is supported by an affidavit, the gist of which is that the questions have already been determined by this Court in the case of ***Bizwayo Newton Nkunika v Lawrence Nyirenda and another*¹**.

The applicant opposed the Motion in an Affidavit in Opposition, the gist of which is that this Court is being implored to interpret the meaning of the words ***“has obtained as a minimum academic qualification, a Grade 12 Certificate or its equivalent”***.


~~We have considered the issues raised in the Motion, the affidavit evidence by both sides and the skeleton arguments. We have also considered the oral submissions made during the hearing. We agree~~

that the interpretation of Article 70 (1) (d) of the Constitution was well settled in the case of **Bizwayo Newton Nkunika v Lawrence Nyirenda and another¹**.


Accordingly, we find merit in the first preliminary issue. Given our position regarding the first preliminary issue, the second preliminary issue, therefore, falls away.

The net result is that the applicant's action is dismissed.


Each party will bear their own costs.



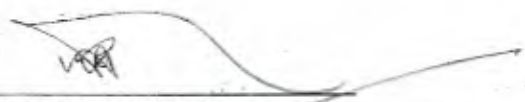
M.S MULENGA
CONSTITUTIONAL COURT JUDGE



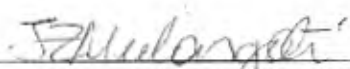
M.M MUNALULA
CONSTITUTIONAL COURT JUDGE



M. CHITABO, SC
CONSTITUTIONAL COURT JUDGE



M.K CHISUNKA
CONSTITUTIONAL COURT JUDGE



J.Z MULONGOTI
CONSTITUTIONAL COURT JUDGE