

**IN THE CONSTITUTIONAL COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)**

2021/CCZ/0010



**IN THE MATTER OF: ARTICLES 117 (5) OF THE CONSTITUTION OF ZAMBIA,
AND**

**IN THE MATTER OF: THE PETITION PURSUANT TO ARTICLE 28 OF THE
CONSTITUTION OF ZAMBIA, AND**

**IN THE MATTER OF: THE CONTRAVENTION OF ARTICLE 45 AND 49 OF THE
CONSTITUTION OF ZAMBIA ACT NO. 2 OF 2016, AND**

**IN THE MATTER OF: THE CONTRAVENTION OF SECTION 3 AND 110 OF THE
ELECTORAL PROCESS ACT NO. 35 OF 2016, AND**

**IN THE MATTER OF: THE ELECTORAL PROCESS (GENERAL) REGULATIONS,
2016: REGULATION Nos. 43, 45, 50, AND 53**

**IN THE MATTER OF: THE PETITION PURSUANT TO SECTION 8 (3) OF THE
CONSTITUTIONAL COURT ACT NO. 37 OF 2016, AND**

**IN THE MATTER OF: ORDER 4 RULE 1 OF THE CONSTITUTIONAL COURT
RULES, STATUTORY INSTRUMENT NO. 37 OF 2016**

BETWEEN

KALUBA MUSENDA SIMUYEMBA

1ST PETITIONER

**(Suing as a Party Leader and Chairperson on behalf of
Movement for Change and Equality)**

PETER MUTONDO KACHAMA

2ND PETITIONER

**(Suing as Deputy Secretary General on behalf of
Movement for Change and Equality)**

AND

ATTORNEY GENERAL

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

Coram: Sitali, Mulenga and Munalula, JJC on the 18th day of May, 2021 and 4th June, 2021

For the Petitioners : No Appearance

For the 1st Respondent: No Appearance

**For the 2nd Respondent : Mr. B .M. Musenga, Commission Secretary
Mr. M. Bwalya, Legal Officer**

R U L I N G

Cases cited:

- 1. Benjamin Mwelwa v. The Attorney General, The Electoral Commission of Zambia and 3 Others 2020/CCZ/007**
- 2. Attorney General v E.B Jones Machinists Limited (SCZ Judgment No. 26 of 2000)**
- 3. Lloyd Chembo v Attorney General and others Selected Judgment No. 15 of 2018 (2017/CZ/0011)**
- 4. Vincent Chaile v Electoral Commission of Zambia 2021/CCZ/007**
- 5. William David Carlisle Wise v. EF Harvey Limited (1985) Z.R. 179**
- 6. Drummond Jackson v. British Medical Association [1970] 1 ALL ER 1094**
- 7. Richard Mumba v Garry Nkombo and 43 Others 2017/CCZ/005**

Statutes referred to:

- 1. The Constitution of Zambia, Act No. 2 of 2016**
- 2. The Constitutional Court Act No. 8 of 2016**
- 3. The Constitutional Court Rules, S.I. No. 37 OF 2016**
- 4. Electoral Process Act No. 35 of 2016**
- 5. Electoral Process (General) Regulations, S.I. No. 63 of 2016**

Works referred to:

- 1. The Supreme Court Practice, 1999 Edition (White Book)**
- 2. Black's Law Dictionary, Tenth Edition, Thomson Reuters**
- 3. Dr. P. Matibini, *Zambian Civil Procedure: Commentary and Cases*, Volume 1, LexisNexis, 2017**

Introduction

[1] This Ruling is on the 2nd Respondent's application to strike out and dismiss the Petition made pursuant to Article 128 (1) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution); section 8 (1) of the Constitutional Court Act No. 8 of 2016; and Order 1 Rules 1 and 2 of the Constitutional Court Rules Statutory Instrument No. 37 of 2016 as read with Order 18 Rule 19 of the Rules of the Supreme Court of England, 1999 Edition (White Book).

[2] The application is based on the following grounds:

- 1. The Petition and Affidavit Verifying Facts do not disclose any cause of action against the 2nd Respondent capable of being sustained in this Court and that the Petition is frivolous, vexatious and otherwise an abuse of process of this Court.**
- 2. The Petition is not properly before this Court by reason of want of jurisdiction having regard to the provisions of the Constitution of Zambia Act No. 2 of 2016 and Section 8 (1) of the Constitution of Zambia Act No. 8 of 2016, as the Petitioner is alleging violation of his rights. The enforcement and protection of rights is a preserve of the High Court of Zambia pursuant to Article 28 of**

the Constitution of Zambia and not within the jurisdiction of this Court.

Background

[3] The Petitioners filed their Petition on 12th April, 2021 under Article 128 (1) alleging a violation or contravention of Articles 45 and 49 of the Constitution and under Article 28 seeking redress for the contravention. The Petitioners alleged that there were possibilities of electoral rigging in view of gaps in the Electoral Process Act No. 35 of 2016 (Electoral Process Act) and Regulations and that the electoral system was inconsistent with international best practices. The Petition mainly **outlined various** provisions of the Constitution and the Electoral Process Act and Regulations.

[4] As regards the facts relied upon in support of the Petition, the Petitioners stated that they wished to tender a forensic interrogation of the result management process and tools for 2021 General Elections with emphasis on the possibilities of electoral rigging in view of gaps in the Electoral Process Act and its regulations and that the said system was inconsistent with international best practices. The particular subject matters of contravention as outlined in paragraph 7 of the Petition stated briefly are:

- i. The failure by both Respondents to ensure that the result management process and tools for the 2021 General Elections are devoid of all possible deviousness amounting to electoral rigging.
- ii. The failure by the 2nd Respondent to put safeguard measures for a fair and free election in order to ensure that comprehensive and strict electoral dispute mechanisms are put in place.
- iii. The failure by the 2nd Respondent to ensure that voters registers, in terms of coding of respective Polling Districts/Stations, are linked to the Ward, Constituency, District, Province and National Results Centre to reflect the cumulative nature of each respective election.
- iv. The failure by the 2nd Respondent to ensure that the serial numbers put on the Ballots match or tally with the respective polling district/stations in view of results for Councillor in a Ward and Member of Parliament in a Constituency.
- v. The failure by both Respondents to ensure that the electoral laws and regulations put in place are complied with in order to avoid the making of administrative decisions.

