

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

2021/CCZ/A0013

IN THE MATTER OF: LOCAL GOVERNMENT ELECTION PETITION
FOR LUKUTU WARD LUWINGU DISTRICT
HELD ON THE 12TH DAY OF AUGUST, 2021

BETWEEN

KENNEDY KATONGO

AND

PETER CHANDA

ELECTORAL COMMISSION OF ZAMBIA



APPELLANT

1ST RESPONDENT

2ND RESPONDENT

Coram: Sitali, Mulonda, Musaluke, Chisunka and Mulongoti JJC on 20th
January, 2022

For the Appellant:

Mr. L. C. Lemba of Mulungushi
Chambers

For the 1st Respondent:

No appearance

For the 2nd Respondent:

Mr. M. Bwalya, Legal officer at the
Electoral Commission of Zambia

RULING

Mulonda, JC, delivered the Ruling of the Court

LEGISLATION REFERRED TO:

1. The Constitutional Court Rules, S.I. No. 37 of 2016

[1] This Ruling follows a scheduled hearing of the appeal by Kennedy Katongo as Appellant, Peter Chanda as 1st Respondent and Electoral Commission of Zambia as the 2nd Respondent. When the matter before us came up for hearing of the appeal, we observed that the Appellant filed the Record of Appeal on 7th December, 2021 without the heads of argument. The provisions of Order XI Rule 5 of the Constitutional Court Rules have a mandatory requirement that the Record of Appeal should be filed together with the heads of argument. Order XI Rule 5 of the Constitutional Court Rules states as follows:

“Subject to rule 4 and any extension of time, the appellant shall, within thirty days after filing a notice of appeal, lodge the appeal by filing in the Registry twenty hard copies of the record of appeal together with heads of argument and an electronic copy of the record of appeal.”

[2] We therefore inquired from counsel for the Appellant whether the Appellant’s heads of argument were filed and he confirmed that the heads of argument were not filed due to an administrative lapse within the chambers which lapse was discovered on Thursday 13th January, 2022. Counsel informed

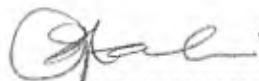
the Court that he intended to argue the appeal *viva voce* in the absence of the written heads of argument.

[3] Counsel for the 2nd Respondent informed us that he did bring to the attention of counsel for the Appellant that there were no filed heads of argument on Thursday 13th January, 2022. However, counsel for the Appellant insisted that the heads of argument had been filed.

[4] We observe that although counsel for the Appellant realised that there were no heads of argument filed by the Appellant on 13th January, 2022, which was a whole week before the appeal came up for hearing on 20th January, 2022, he took no steps to seek leave from the Court to file the heads of argument out of time.

[5] Upon being prodded by the Court, he submitted that he intended to argue the appeal *viva voce* in the absence of filed heads of argument.

[6] In view of the mandatory nature of Order XI Rule 5 of the Constitutional Court Rules and the default in the manner of lodging the appeal, the appeal before us is defective and we accordingly dismiss it. Each party to bear their own costs.



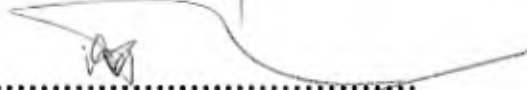
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A. M. SITALI
CONSTITUTIONAL COURT JUDGE



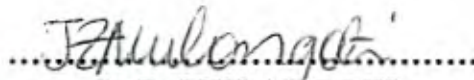
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P. MULONDA
CONSTITUTIONAL COURT JUDGE



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M. MUSALUKE
CONSTITUTIONAL COURT JUDGE



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M. K. CHISUNKA
CONSTITUTIONAL COURT JUDGE



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J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE