

IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA

2021/CCZ/0022

IN THE MATTER OF: ARTICLE 128(1) (a) OF THE CONSTITUTION AS
AMENDED BY ACT NO. 2 OF 2016

AND

IN THE MATTER OF: ARTICLE 261 AND 263 OF THE
CONSTITUTION OF ZAMBIA AS AMENDED BY
ACT NO. 2 OF 2016

BETWEEN

CHAPTER ONE FOUNDATION LIMITED

AND

THE ATTORNEY GENERAL

RESPONDENT

CORAM: SITALI, MULENGA, MUSALUKE, CHISUNKA AND MULONGOTI
JJC. On 18th August, 2021 and 2nd February, 2022.

For the Applicant: Ms. L. C. Kasonde and Ms. M.N. Milambo
both of LCK Chambers

For the Respondent: Mrs. K. N. Mundia, Principal State
Advocate - Attorney General's Chambers



JUDGMENT

Musaluke, JC, delivered the Judgment of the Court.

Cases referred to:

1. Milford Maambo & Others v The People CCZ Selected Judgment No. 31 of 2017.
2. Kambarage Mpundu Kaunda v The People SCZ Judgment No. 12 of 1991.
3. The Attorney General, Movement for Multi-Party Democracy v Akashambatwa Mbikusita Lewanika and Others SCZ Judgment No. 2 of 1994.
4. Rizzo & Rizzo Shoes Limited (Re) (1998) 1 SCR 27 (SCC).
5. South Dakota v North Carolina (1940) 192 268.
6. Zambia National Commercial Bank Plc. v Martin Musonda and Others CCZ Selected Judgment No. 24 of 2018.
7. Steven Katuka and Law Association of Zambia v Attorney General and Others CCZ Selected Judgment No. 29 of 2016.

Legislation referred to:

1. The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by Act No. 2 of 2016.
2. The Constitution of Zambia Act No. 1 of 2016.
3. The Constitution of Zambia Act, 1991.
4. The Constitution of Zambia Act, 1991 as amended by Act No. 18 of 1996.
5. The Parliamentary and Ministerial Code of Conduct Chapter 16 of the Laws of Zambia.

Other material referred to:

1. The Report of the Technical Committee on Drafting the Zambian Constitution of 30th December, 2013.

[1] INTRODUCTION

- [1.1] By an originating summons and affidavit in support dated 10th May, 2021 the Applicant herein, seeks the determination of the following question:

Whether Article 263 of the Constitution as amended by Act No. 2 of 2016 which provides that holders of public office may declare their assets upon assuming or on leaving such office is in conflict with Article 261

of the Constitution, which requires that a holder of public office shall act in accordance with a code of conduct and ethics, as prescribed for that office.

[2] BACKGROUND

[2.1] The background to this matter as stated in the affidavit in support of the originating summons sworn by Suzanne Matale, a Director in the Applicant company is that: by a letter dated 13th January, 2021 the Applicant made a formal complaint to the Chief Justice of the Republic of Zambia regarding the alleged failure of named Ministers to comply with their obligations under section 10 of the Parliamentary and Ministerial Code of Conduct Act Chapter 16 of the Laws of Zambia (the Act) to annually declare their assets, liabilities and sources of income. In the letter under reference, the Applicant requested the Chief Justice to constitute a tribunal pursuant to section 13(1) and (3) of the Act to investigate the failure by the Ministers to make statutory declarations.

[2.2] On 11th February, 2021 the Chief Justice responded to the Applicant's request and stated that she was constrained from appointing a tribunal as section 10 of the Parliamentary and

Ministerial Code of Conduct Act was overtaken by Article 263 of the Constitution as amended by Act No. 2 of 2016 (the Constitution) which only requires holders of public office to make declarations either before assuming office or upon leaving office. Dissatisfied with the Chief Justice's response, the Applicant was prompted to institute the action now before us.

[3] APPLICANT'S CASE

[3.1] The Applicant contends that although Article 263 of the Constitution requires holders of public office to make declarations before assuming office or upon leaving office, Article 261 of the Constitution requires holders of public office to abide by a code of conduct prescribed for their offices. That in the case of Ministers, the prescribed code of conduct is that contained in the Act.

[3.2] The Applicant, therefore, seeks an interpretation of Article 263 of the Constitution and particularly a determination of whether or not the said provision is in conflict with Article 261 of the Constitution which requires all holders of public office to abide by a code of conduct prescribed for their office, which includes the prescription of the standard and frequency with which the

Ministers ought to make a declaration of their assets, liabilities and sources of income.

[3.3] On 20th July, 2021 with leave of Court, the Applicant filed its skeleton arguments in support of the originating summons.

[3.4] It was submitted that Article 261 of the Constitution provides that 'a person holding a public office shall act in accordance with a code of conduct and ethics, as prescribed for that office.' The import of this provision is that immediately a person assumes public office, he or she is expected to abide by a code of conduct and ethics prescribed for that particular office.

[3.5] That the term 'public office' used in Article 261 of the Constitution is defined under Article 266 of the Constitution as follows:

'public office' means an office whose emoluments and expenses are a charge on the Consolidated Fund or other prescribed public fund and includes a State office, Constitutional office and an office in the public service, including that of a member of a Commission.

[3.6] That a Minister being a holder of public office, falls within the definition of public office under Article 266 of the Constitution and Article 261 of the Constitution applies to him or her.

[3.7] As regards the code of conduct which a Minister is supposed to abide by, our attention was drawn to section 10 of the Parliamentary and Ministerial Code of Conduct Act which provides as follows:

10(2) An Officer shall-

- (a) within thirty days after his appointment; and**
- (b) within thirty days after each anniversary of his appointment to the office concerned;**

submit to the Chief Justice an annual declaration of assets, liabilities, and income in accordance with this section.

(3) An annual declaration shall fairly state -

- (a) the value of the assets (other than personal and household effects) and liabilities of the Officer as at the declaration date; and**
- (b) the total income of the Officer, together with his income from each source, for the twelve months preceding the declaration date.**

[3.8] It was argued that section 10 of the Parliamentary and Ministerial Code of Conduct Act gives a detailed complement to Article 261 of the Constitution in so far as it provides for the declaration of assets, liabilities and income by Ministers and submission to the Chief Justice within thirty days of appointment and within thirty days after each anniversary of the appointment.

- [3.9] It was also argued that conversely, Article 263 of the Constitution provides a duty for persons holding public office to make a declaration of their assets and liabilities either before assuming office or upon leaving office.
- [3.10] It was therefore submitted that although Article 263 of the Constitution only requires holders of public office to make declarations before assuming or leaving office, Article 261 of the Constitution requires holders of public office to abide by a code of conduct prescribed for their office. The two provisions of the Constitution should, therefore, be read together in order to achieve their purpose.
- [3.11] The Court's attention was further drawn to the case of **Milford Maambo and Others v The People**¹ where we emphasized the principle that a constitution should be read as a whole, and no single provision should be read in isolation.
- [3.12] That there is nothing that suggests that the provisions of Article 263 of the Constitution are to be read or interpreted so as to be in conflict with Article 261. There is nothing therefore that indicates either expressly or by implication that the validity or force of Article 261 is dependent on Article 263. The two

provisions whether read together or separately, all serve one purpose. That the intention of the law is to compel in mandatory terms, the adherence of a person holding public office to a set of prescribed rules and regulations contained in a code of conduct and ethics for that office and any interpretation to the contrary would not be in the spirit and purpose of the Constitution.

[3.13] The Applicant submitted on the function of statutory interpretation as laid down in the Supreme Court decision of **Kambarage Mpundu Kaunda v The People**² in which the Court opined that the cardinal rule of interpretation is that the court will not adopt one, two or more possible interpretations which will produce absurd results when a different interpretation will in fact be more conformable to the purpose and intentions of the law.

[3.14] It was argued therefore that in the case before us, the interpretation that ought to be employed by the Court is one that prevents absurd results and one which will conform to the purpose and intentions of the law. That prevention of absurd results and conformity with the purpose and intention of the

law is an emphasized task of the court which this Court ought not to lose sight of in its interpretation of the Constitution.

[3.15] It was further argued that the Court will not only move away from the literal interpretation when there is an absurdity but will also do so in order to promote the general legislative purpose underlying the provisions as was held by the Supreme Court in the case of **Attorney General, Movement for Multi-Party Democracy v Akashambatwa Mbikusita Lewanika and Others**³.

[3.16] That in the case of Articles 261 and 263 of the Constitution, the purpose is to subject a public office holder to a prescribed set of rules, regulations and a code of conduct and ethics for that particular office.

[3.17] In buttressing this point, recourse was had to Article 267 of the Constitution which lays a standard for interpretation of the Constitution and provides that the Constitution shall be interpreted in accordance with the Bill of Rights and in a manner that promotes its purposes, values and principles, permits the development of the law and contributes to good governance.

- [3.18] It was submitted that the interpretation of Articles 261 and 263 of the Constitution should be done in a way that promotes its purposes, values and principles and permits the development of the law and contributes to good governance in the country.
- [3.19] The Applicant submitted that contrary to the Respondent's assertions, Articles 261 and 263 of the Constitution are not in conflict as they both speak to each other in broad terms and point to an Act of Parliament for detailed ethics and code of conduct that a person holding public office must adhere to. Further that in law, context is everything. As such, this Court must interpret the two provisions in the context of the objectives and purpose of the provisions adding that words are meaningless if read in abstract, isolation or divorced from context.
- [3.20] The Canadian Supreme Court case of **Rizzo & Rizzo Shoes Limited**⁴ was cited to emphasize the principle of harmonious interpretation of statutes. It was argued that an approach that is harmonious and achieves the objectives of the Constitution or statute is to be adopted in interpreting statutes.

[3.21] Therefore, Articles 261 and 263 of the Constitution should be interpreted in a harmonious manner, pursuing the purpose and objectives that they broadly provide for which is to compel public officers to adhere to a set of ethics and code of conduct prescribed in an Act of Parliament to declare interest, assets and liabilities in order to promote good governance and accountability.

[4] RESPONDENT'S CASE

[4.1] On 7th June, 2021 the Respondent filed its affidavit in opposition together with skeleton arguments.

[4.2] The affidavit in opposition was deposed to by Mr. Abraham Mwansa, SC the Solicitor General then, who averred that the provisions of Article 261 of the Constitution relate to the requirement that a public officer shall act in accordance with a code of conduct and ethics as prescribed for that office. On the other hand, Article 263 of the Constitution requires a person holding a public office to make a declaration of assets and liabilities either before assuming office or on leaving office.

[4.3] In the skeleton arguments in opposition, it was the Respondent's position that the provisions of Articles 261 and

263 of the Constitution read together provide that persons holding public office ought to act in accordance with a code of conduct and ethics and equally declare their assets and liabilities either on assuming office or leaving office as prescribed. As such, there is no conflict in the two provisions, rather, that the said provisions complement each other.

[4.4] It was argued that Articles 261 and 263 of the Constitution should not be segregated as they have a bearing on regulating the conduct of persons holding public office.

[4.5] The American case of **South Dakota v North Carolina**⁵ was cited in which the Supreme Court of the United States of America stated *inter alia* that no singular provision of the Constitution should be segregated from the others and that all provisions bearing on a particular subject must be considered and taken into account in interpreting a provision of the Constitution so as to give effect to the greater purpose of the instrument.

[4.6] It was the Respondent's submission that Articles 261 and 263 of the Constitution should not be interpreted separately but as a whole in order to give effect to the objective of the Constitution.

To aid this argument, the case of **Milford Maambo & Others v The People**¹ was cited wherein we held as follows:

We also stated that a further principle of constitutional interpretation is that all relevant provisions bearing on the subject for interpretation should be considered together as a whole in order to give effect to the objective of the Constitution. This means that no one provision of the Constitution should be segregated from the others and considered alone.

- [4.7] The Respondent submitted that a literal approach to interpretation of Articles 261 and 263 of the Constitution as a whole leads to the conclusion that Article 263 flows from Article 261 and that Article 261 requires a holder of public office to act in accordance with a code of conduct and ethics as prescribed.
- [4.8] That the said code of conduct may include other aspects like the issues of collective responsibility, conflict of interest, independence, impartiality and a declaration of assets and liabilities among others.
- [4.9] Further, that Article 262 of the Constitution also complements Articles 261 and 263 of the Constitution as these provisions encourage accountability by public officers and require adherence to a certain level of conduct expected of them.

[4.10] The Respondent urged us to dismiss the Applicant's action with costs as it lacked merit.

[5] **ANALYSIS AND DECISION**

[5.1] We have considered the originating summons before us with its accompanying affidavit, the affidavit in opposition as well as the skeleton arguments filed by the parties.

[5.2] The issue for our determination is whether or not:

Article 263 of the Constitution which provides that holders of public office may declare assets upon assuming office or on leaving such office is in conflict with Article 261 of the Constitution which requires that a holder of public office must act in accordance with a code of conduct and ethics prescribed for that office.

[5.3] The provisions of Article 267(1) of the Constitution provides in mandatory terms how the Constitution ought to be interpreted by stating that:

This Constitution shall be interpreted in accordance with the Bill of Rights and in a manner that—

- (a) promotes its purposes, values and principles**
- (b) permits the development of the Law; and**
- (c) contributes to good governance**

- [5.4] Further, Article 9 of the Constitution mandates this Court to apply the national values and principles in interpreting the Constitution.
- [5.5] Following on this, this Court has in numerous cases incorporated these principles of constitutional interpretation. In the cases of **Milford Maambo & Others v The People¹** and **Zambia National Commercial Bank PLC v Martin Musonda and 58 others⁶**, we clearly stated that the primary principle in interpreting the Constitution is that the meaning of the text should be derived from the plain meaning of the language used. Only when there is an ambiguity or where a literal interpretation will lead to absurdity should other principles of interpretation be resorted to.
- [5.6] Another principle of constitutional interpretation laid down by this Court is that all the relevant provisions bearing on the subject for interpretation should be considered together as a whole in order to give effect to the objective of the Constitution. This means that no one provision of the Constitution should be segregated from the others and considered alone. This is what

we stated in the case of **Steven Katuka and Law Association of Zambia v Attorney General and Others**⁷.

[5.7] It is these principles that guide this Court in constitutional interpretation and that will guide us in determining the issue before us. That said, we now proceed to address the issue before us.

[5.8] It is the Applicant's argument that although Article 263 of the Constitution only requires holders of public office to make declarations of assets and liabilities before assuming office or upon leaving office, Article 261 of the Constitution requires holders of public office to abide by a code of conduct prescribed for their office, in this case, the Parliamentary and Ministerial Code of Conduct Act. That this Court should therefore interpret Articles 261 and 263 of the Constitution and determine whether or not they are in conflict with each other.

[5.9] We have addressed our minds to the provisions in question which we reproduce here. Article 261 of the Constitution provides as follows:

A person holding public office shall act in accordance with a code of conduct and ethics prescribed for that office.

On the other hand, Article 263 of the Constitution provides as follows:

A person holding a public office shall, before assuming office or leaving office, make a declaration of their assets and liabilities, as prescribed.

[5.10] As regards the import of Article 261 of the Constitution, the Applicant argued that immediately a person assumes public office, there is a code of conduct and ethics that they are expected to follow and that code of conduct and ethics is prescribed for that particular office; and that a Minister being a public officer within the definition of Article 266 falls within the ambit of Article 261. Further, it was argued that the standard and code of conduct to which a Minister is required to abide is spelt out in an Act of Parliament, namely, the Parliamentary and Ministerial Code of Conduct Act, particularly section 10 therein.

[5.11] On the other hand, the Respondent argued that Article 261 of the Constitution relates to the requirement that a public officer shall act in accordance with a code of conduct and ethics as prescribed for that office. That Article 263 of the Constitution specifically requires a person holding public office to make a

declaration of assets and liabilities either before assuming office or on leaving office.

[5.12] Our view is that Article 261 of the Constitution only requires a holder of public office to act in accordance with a code of conduct and ethics prescribed for that office generally. In terms of Ministers, this code of conduct may relate to, among others; collective responsibility, conflict of interest, independence, impartiality and declaration of assets and liabilities.

[5.13] Article 261 has been in existence since the enactment of the Constitution of Zambia Act, 1991 as amended by Act No. 18 of 1996. This was provided for under Article 52 therein. The wording of the then Article 52 has never changed and is now the present Article 261 of the Constitution.

[5.14] It was pursuant to Article 52 of the Constitution of Zambia Act, 1991, that the Parliamentary and Ministerial Code of Conduct Act No. 35 of 1994 was enacted. It is this Act that provides under section 10 for periodic declaration of assets, liabilities and incomes by Ministers.

[5.15] Article 263 of the Constitution is a new addition and did not exist in the previous constitutional order. This Article

specifically provides that a person holding a public office shall, before assuming office and on leaving office, make a declaration of his or her assets and liabilities as prescribed.

[5.16] In order to fully comprehend and contextualize the objective of Article 263 of the Constitution, we need to look at the rationale behind it given by the framers of the Constitution.

[5.17] The Report of the Technical Committee on Drafting the Zambian Constitution gave the rationale for Article 263 (Article 309 in the draft constitution) as follows:

The rationale for the Article was that it was necessary for public officers to declare their assets and liabilities and for parliament to enact legislation specifying categories of public officers who shall be required to make declaration of their assets and liabilities and other matters incidental to such declaration in order to enhance good governance.

[5.18] The Report further states in relation to Article 263 as follows:

The Technical committee amended the Article by simplifying it and removing unnecessary detail. The Committee also amended the Article by providing for declaration of assets and liabilities by a public officer upon exit of office. The committee observed that providing for declaration of assets and liabilities by a public officer at assumption of office alone did not promote transparency and accountability.

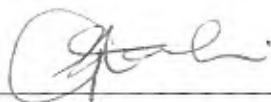
- [5.19] What we decipher from the historical background to the enactment of Article 263 is that the framers of the Constitution were alive to the fact that public officers ought to make a declaration of assets and liabilities at two instances namely; at assumption of office and upon exit from office so as to promote transparency, accountability and good governance.
- [5.20] In other words, the rationale for Article 263 of the Constitution was to avail to the public, information regarding assets and liabilities of a public officer at the time of assuming office and when exiting from public office so as to keep a public officer accountable for assets and liabilities acquired in between the two periods.
- [5.21] We therefore take the view that both Articles 261 and 263 of the Constitution seek to provide accountability for public officers and thus there is no conflict between the two Articles.
- [5.22] The literal interpretation of Article 261 therefore, leads to a conclusion that it gives a general direction that a public officer should act in accordance with a code of conduct and ethics prescribed for that office. The prescribed code of conduct in this case is the Parliamentary and Ministerial Code of Conduct Act

which among other things provides in sections 4, 5, 6, 9 and 10 for the following: Members of Parliament not to acquire any pecuniary advantage, Members of Parliament to disclose pecuniary interests to National Assembly, declaration of interest in Government contracts, collective responsibility of Ministers and annual declaration of assets, liabilities and income respectively.

[5.23] On the other hand, the literal interpretation of Article 263 of the Constitution leads to a conclusion that it specifically talks to the declaration of assets, liabilities and income of public officers and clearly gives guidelines on the frequency of such declaration that is; at the time of assuming office and at the time of leaving office.

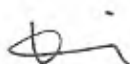
[5.24] For the avoidance of doubt, we reiterate that there is no conflict between the provisions of Articles 261 and 263 of the Constitution.

[5.25] We order that each party bears own costs.



A.M. Sitali

CONSTITUTIONAL COURT JUDGE



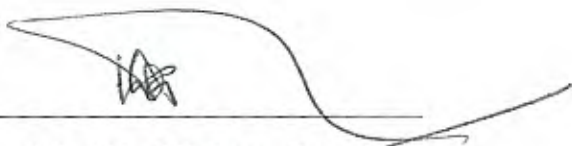
M.S. Mulenga

CONSTITUTIONAL COURT JUDGE



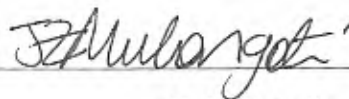
M. Musaluke

CONSTITUTIONAL COURT JUDGE



M. K. Chisunka

CONSTITUTIONAL COURT JUDGE



J.Z. Mulongoti

CONSTITUTIONAL COURT JUDGE