

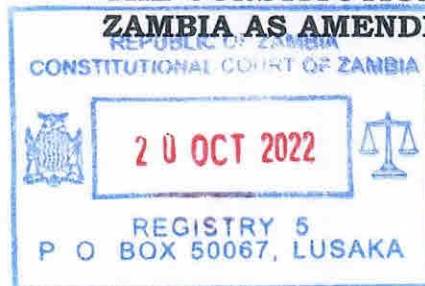
**IN THE CONSTITUTIONAL COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)**

2022/CCZ/0024

**IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA, CHAPTER 1,
VOLUME 1 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE INTERPRETATION OF ARTICLE 52 (4) OF
THE CONSTITUTION OF THE REPUBLIC OF
ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016**

**BETWEEN:
BERNARD KANENGO
AND
THE ATTORNEY GENERAL
ELECTORAL COMMISSION OF ZAMBIA**



APPLICANT

1ST RESPONDENT

2ND RESPONDENT

**Coram: Mulonda, Mulenga and Mulongoti, JJC,
on 13th October, 2022 and 20th October 2022**

For the Applicant: Mr. C. Magubbwi of Magubbwi and Associates.

**For the 1st Respondent: Mr. M. Muchende SC, Solicitor General,
Mr. J. Simachela, Chief State Advocate,
Mr. C. Mulonda, Principal State Advocate
Mr N. Mwiya Assistant Senior State Advocate
Mr. O. Lubumbe State Advocate
Mr. C. Mulumbwa State Advocate of Attorney
General's Chambers.**

For the 2nd Respondent: Ms. T. Phiri and Mr. M. Bwalya, In-House Counsel Electoral Commission of Zambia.

J U D G M E N T

Mulongoti, JC delivered the Judgment of the Court.

Cases referred to:

- 1. Isaac Mwanza v Attorney General – 2021/CCZ/0045.**
- 2. Jonas Zimba v Attorney General – 2022/CCZ/007.**
- 3. Steven Katuka and Law Association of Zambia v Attorney General and Ngosa Simbyakula and 63 others, CCZ Judgment No. 29 of 2016.**
- 4. Gift Luyako Chilombo v Biton Manje Hamaleke – 2016/CCZ/0045; Appeal No. 2 of 2016.**
- 5. Hakainde Hichilema and Geoffrey Bwalya Mwamba v Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and Attorney General, Ruling No. 33 of 2016; 2016/CCZ/0031.**
- 6. Sylvester Musonda Shipolo v Attorney General – 2020/CCZ/0016.**
- 7. Institute of Law, Policy Research and Human Rights v Attorney General – 2021/CCZ/0023.**
- 8. Zacharia Okoth Obado v Edward Akong’o Oyugi and 2 Others [2014] eKLR.**

Legislation referred to:

- 1. The Constitution of Zambia (Amendment) Act No.2 of 2016,**
- 2. The Electoral Process Act No. 35 of 2016**

3. **The Electoral Process (General) (Amendment) Regulations, 2021, Statutory Instrument No. 39 of 2021**
4. **The Constitutional Court Rules, Statutory Instrument No. 37 of 2016**

Introduction

[1] By Originating Summons taken out on 29th September, 2022, the applicant herein seeks this Court's determination of the following questions:

1. **Whether pursuant to Article 52 (4) of the Constitution, the prescribed period of 21 days within which to hear a challenge relating to nominations of a candidate can stop running by virtue of a stay of proceedings.**
2. **Whether pursuant to Article 52 (4) of the Constitution, the prescribed period of 21 days within which to hear a challenge relating to nominations of a candidate can be enlarged by any person or authority or Court for that matter.**

Applicant's case

[2] Facts leading to this action are as stated in the Affidavit in Support of Originating Summons dated 29th September, 2022 and sworn by Bernard Kanengo, the applicant herein. The applicant deposed that he was adopted as parliamentary candidate in the Kabushi constituency by-election slated for the 15th September, 2022 under

the United Party for National Development (UPND) ticket. That this followed the nullification of elections for Kwacha and Kabushi Constituencies by the High Court as the court of first instance and upheld by the Constitutional Court on appeal.

[3] That the Electoral Commission of Zambia, the 2nd Respondent herein, had, consequent to the nullification of the Kabushi and Kwacha parliamentary seats, set 25th August, 2022 as date for filing nominations and 15th September, 2022 as date of by-election for the said Constituencies. However, when the candidates for Kwacha and Kabushi Constituencies whose seats had been nullified, namely, Joseph Malanji and Bowman Chilosha Lusambo respectively, presented their nomination papers on the set date of 25th August, 2022, the 2nd Respondent rejected their nomination papers purporting that they were disqualified under Article 72 (4) of the Constitution of Zambia.

[4] Following rejection of their nominations, the two petitioned the High Court under Cause No. 2022/HP/1327, challenging the 2nd Respondent's decision to reject their nomination papers. In its ruling dated 13th September, 2022, the High Court stayed the by-elections

slated for 15th September, 2022, and ruled that it had jurisdiction, derived from Article 52 (4) of the Constitution as read together with Regulation 18 (7) of the Electoral Process (General) Amendment Regulations, 2021, Statutory Instrument No. 39 of 2021, to determine a petition anchored on Article 52 (4). Exhibited as "BK3" is a copy of the said ruling.

- [5] It was further deposed that the High Court, in its ruling dated 15th September, 2022 and exhibited as "BK4", referred the matter to the Constitutional Court. The 1st respondent, being dissatisfied with the High Court ruling of the 15th instant, applied to the Court of Appeal for leave to appeal the said ruling referring the matter to the Constitutional Court. On 16th September, 2022, a single judge of the Court of Appeal, granted an ex parte order staying proceedings in the High Court. A copy of the ex parte order was exhibited marked "BK5" and in an ex tempore ruling dated 17th September, 2022, the single Judge of the Court of Appeal declined to discharge the stay on the basis that time had stopped running. A copy of the said ruling was exhibited and marked "BK6". That by a ruling dated 22nd September, 2022, the full Court of Appeal

