

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

2022/CCZ/0023

IN THE MATTER OF: ARTICLE 2(a)(b) AS READ TOGETHER WITH ARTICLE 128(1)(a)(b) and 128(3)(b)(c) OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: ARTICLE 1, 3, 8, 9(1)(a)(b), 45(2)(a)(c)(e) AND 267(1) OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE 52(6) AS READ TOGETHER WITH ARTICLE 57(1) OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: OMISSION BY THE ELECTORAL COMMISSION OF ZAMBIA TO CANCEL BY-ELECTIONS UPON RECEIPT AND ACCEPTANCE OF RESIGNATIONS OF CANDIDATES IN KWACHA AND KABUSHI PARLIAMENTARY CONSTITUENCIES BY THE COMMISSION

IN THE MATTER OF: OMISSION BY THE ELECTORAL COMMISSION OF ZAMBIA TO HOLD FRESH NOMINATIONS UPON RECEIPT AND ACCEPTANCE OF RESIGNATIONS BY THE COMMISSION OF CANDIDATES IN KWACHA AND KABUSHI PARLIAMENTARY CONSTITUENCIES IN CONTRAVENTION OF ARTICLE 52(6) AS READ TOGETHER WITH ARTICLE 57(1) OF THE CONSTITUTION.

BETWEEN:

PETER CHAZYA SINKAMBA

ISAAC MWANZA

AND

ELECTORAL COMMISSION OF ZAMBIA



1ST PETITIONER

2ND PETITIONER

RESPONDENT

**CORAM: Sitali, Mulenga and Mulongoti, JJC on 5th October, 2022
and on 17th October, 2022**

For the 1st Petitioner : In Person

For the 2nd Petitioner : In Person

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

ABRIDGED J U D G M E N T

Sitali JC delivered the abridged majority Judgment of the Court.

Cases Cited:

1. Joseph Malanji and Bowman Lusambo v Attorney General and Electoral Commission of Zambia, 2022/HP/1327
2. Mazoka and Others v Mwanawasa and Others (2005) ZR 138
3. Isaac Mwanza v Electoral Commission of Zambia and Attorney General, 2020/CCZ/0008
4. Steven Katuka and Law Association of Zambia v Ngosa Simbyakula and 63 Others, 2016/CCZ/0011

Legislation referred to:

1. The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

2. The Electoral Process Act No. 35 of 2016

Background

[1] This is the abridged majority judgment of the Court. We shall deliver our full reasoned judgment on a date to be notified to the parties.

[2] The Petition relates to the pending parliamentary by-elections for Kabushi and Kwacha constituencies which fell vacant on 28th July, 2022 and 3rd August, 2022, respectively following this Court's decisions to uphold the nullifications on appeal. The Respondent subsequently set 15th September, 2022 as the date for by-elections in the two constituencies and conducted nominations on 25th August, 2022. Among the persons who filed nominations were Alfred Yombwe in respect of the Kabushi Constituency and Lawrence Kasonde in respect of the Kwacha constituency.

[3] On 12th and 13th September, 2022 Alfred Yombwe and Lawrence Kasonde, respectively resigned as candidates for the elections. On 14th September 2022, the Respondent acknowledged the resignations and announced an indefinite suspension of the Kwacha and Kabushi Parliamentary by-elections citing the order to stay the conduct of the by-elections granted by the High Court on 13th September, 2022 in the case of

Joseph Malanji and Bowman Lusambo v Attorney General and Electoral Commission of Zambia¹.

Petitioners' case

[4] The Petitioners allege that the Respondent has contravened Article 52(6) as read with Article 1 (2), (3) and (4) of the Constitution by its omission or failure to cancel the Kabushi and Kwacha parliamentary by-election. That Article 52(6) requires that the Respondent should cancel the election upon a resignation of a candidate and call for fresh nominations. Further, that the new election date ought to fall within the ninety (90) days prescribed in Article 57(1) of the Constitution and that the 90 days period is due to expire on 27th October, 2022 and 2nd November, 2022 for Kabushi and Kwacha constituencies, respectively.

[5] The Petitioners thus seek the following reliefs:

- 1. A declaration that the omission by the Respondent to cancel the elections due to have taken place on 15th September 2022 in Kabushi and Kwacha Constituencies contravene the Constitution, and is thereby illegal;**
- 2. A declaration that nominations held by the Respondent on 25th August 2022 in Kabushi and Kwacha Constituencies are invalid, and any election held on the premise of the said nominations contravene the Constitution, and thereby is illegal, null and void;**

