

IN THE CONSTITUTIONAL COURT
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

2022/CCZ/0026

IN THE MATTER OF: ARTICLE 52(1), (2), (3), (4), (5) AND
(6) OF THE CONSTITUTION OF
ZAMBIA (AMENDMENT) ACT NO. 2
OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 1(3) AND (5) OF THE
CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016
OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE DECISION OF THE
ELECTORAL COMMISSION OF
ZAMBIA, DATED 11TH OCTOBER,
2022.

NICKSON CHILANGWA
(In his capacity as Secretary General for the Patriotic Front)

APPLICANT

AND

ATTORNEY GENERAL 1st RESPONDENT
ELECTORAL COMMISSION OF ZAMBIA 2nd RESPONDENT

CORAM: *Munalula, PC, Mulenga, and Chisunka, JJC on 20th April, 2023.*

APPEARANCES:

For the Applicant: No appearance

For the 1st Respondent: N. Mwiya – Principal State Advocate.

For the 2nd Respondent: Ms. T. Phiri - In House Counsel
M. Bwalya - In House Counsel

R U L I N G

Chisunka, JC, delivered the Ruling of the Court

1. When the matter came up for hearing, the Applicant was not before Court and no explanation was advanced for the absence.
2. A review of the record shows that:-
 - 2.1 On 6th December, 2022, Mr. J. Zimba of Makebi Zulu Advocates, standing in for Messrs Tutwa Ngulube and Company, informed the Court that the Applicant was not ready to proceed for the reason that Counsel for the Applicant on record had passed on. He applied that the matter be adjourned to another date stating that 14 days would be sufficient for the Applicant to engage another Counsel.
 - 2.2 The Court allowed the application and adjourned the matter to be set down for hearing in the January, 2023 session.
 - 2.3 On 26th January 2023, - Mr. Chipompela of Tutwa Ngulube and Company, Standing in for Mr. Likando Kalaluka, SC, in his capacity as caretaker of Tutwa Ngulube and Company, applied for an adjournment on the ground that after the demise of Mr. Tutwa Ngulube, the Law Association of Zambia had

appointed Mr. Likando Kalaluka, SC as caretaker of the law firm. Mr. Kalaluka had yet to obtain instructions and that an adjournment would allow the parties to comply with various house keeping rules.

2.4 There was no objection to the application and the Court granted the application for adjournment as prayed to the February 2023 session with the caveat that "there will be no further adjournments at that point as this is the second time that this matter has had to be adjourned for substantially similar reasons".

2.5 On 16th February, 2023 when the matter came up, there was no appearance on the part of the Applicant and no reasons were advanced for the absence. Since there was a pending application to withdraw certain questions from the Originating Summons and an application for leave to file Applicant's final skeleton arguments out of time, the Court ruled that it would proceed to consider the applications based on the documents that were before it notwithstanding the non appearance of the Applicant. Ruling was reserved to 9th March, 2023.

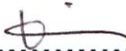
2.6. On 9th March 2023, there was no appearance on the part of the Applicant and the Ruling was delivered in their absence.

3. Today the 20th April, 2023, when the matter came up for hearing there was no appearance on the part of the Applicant and no explanation was communicated for the absence.
4. In view of the foregoing, the Court observes that there is a lack of appetite to prosecute this matter on the part of the Applicant. In the premises, the Court makes the following orders:
 - 4.1 This matter is struck out with liberty to restore within 7 days failing which the matter will stand dismissed for want of prosecution.
 - 4.2 Each party to meet their own cost.

Delivered this 20th day of April, 2023.



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M. MUNALULA, JSD
PRESIDENT
CONSTITUTIONAL COURT



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M. S. MULENGA
CONSTITUTIONAL COURT JUDGE



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M. K. CHISUNKA
CONSTITUTIONAL COURT JUDGE