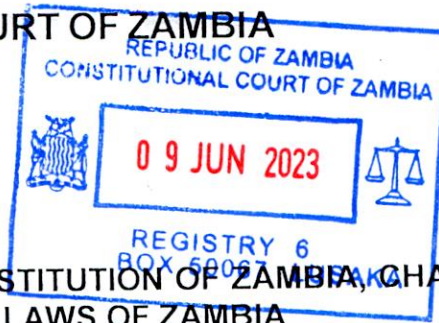


IN THE CONSTITUTIONAL COURT OF ZAMBIA

2023/CCZ/001

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)



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

IN THE MATTER OF: ARTICLE 1 (2), (3) And (5) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016

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

IN THE MATTER OF: ARTICLE 120 (1), (2) And (3) OF THE CONSTITUTION OF ZAMBIA ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 122 OF THE CONSTITUTION OF ZAMBIA ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 128 (3) (a), (b) And (c) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 8 (a), (c) And (d) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 133 (c) OF THE CONSTITUTION OF ZAMBIA ACT NO. 2 OF 2016

IN THE MATTER OF: ARTICLE 134 (a), (b) And (c) OF THE CONSTITUTION OF ZAMBIA ACT NO. 2 OF 2016

IN THE MATTER OF: THE DECISION BY THE CHIEF JUSTICE TO CONSTITUTE THE ECONOMIC AND FINANCIAL CRIMES COURT IN THE SUBORDINATE COURT ADMINISTRATIVELY

IN THE MATTER OF: THE DECISION BY THE JUDGE IN CHARGE OF THE PRINCIPAL REGISTRY TO TRANSFER CERTAIN MATTERS TO THE ECONOMIC AND FINANCIAL CRIMES COURT ADMINISTRATIVELY

BETWEEN:

BOWMAN LUSAMBO

AND

THE ATTORNEY GENERAL



PETITIONER

RESPONDENT

CORAM: Shilimi DPC, Mulonda, Mulongoti, Kawimbe and Mulife, JJC, on 18th April, 2023 and 9th June, 2023

For the Petitioner: Mr. J. Zimba and Ms. M. Phiri of Messrs. Makebi Zulu Advocates

For the Respondent: Mr. M. Muchende, SC, Solicitor General
Mr. C. Mulonda and Mr. N. Mwiya, Principal State Advocates – Attorney General’s Chambers

RULING

Mulongoti, JC, delivered the Ruling of the Court

Cases referred to:

1. C & S Investments Limited, Ace Car Hire Limited, Sunday Maluba v The Attorney General (2004) Z.R 216 (SC).

2. Rajan Lekhraj Mahtani and John Sangwa v The People, SCZ Judgment No. 21 of 2009.
3. Zambia Revenue Authority v Professional Insurance Corporation Zambia SCZ Appeal No. 34 of 2017.
4. Fredson Kango Yamba v The Principal Resident Magistrate and others 2023/CCZ/003 (Unreported).
5. Lloyd Chembo v Attorney General CCZ SJ Number 15 of 2018
6. Dipak Patel v Ministry of Finance and Attorney General 2020/CCZ/005 (Unreported).
7. Sean Tembo v Electoral Commission of Zambia and Attorney General 2021/CCZ/007 (Unreported).
8. Milingo v Attorney General 2022/CCZ/006 (Unreported).
9. Shamwana and 7 others v The People (1985) Z.R 41.
10. Hakainde Hichilema v The Attorney General SCZ Appeal No. 4 of 2019.
11. Alfred Mulenga v The People (1977) Z.R 106 (SC).
12. Gastove Kapata v The People (1984) Z.R 47 (SC).
13. Henry Kapoko v The People – 2016/CCZ/0023.
14. Liversidge v Anderson [1942] AC 206.
15. Law Association of Zambia v Attorney General 2021/CCZ/0051(Unreported)

Legislation:

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 Constitutional Court Rules, Statutory Instrument No. 37 of 2016.
3. The Subordinate Courts Act Chapter 28 of the Laws of Zambia.

Other works referred to:

1. The Rules of the Supreme Court of England, 1999 edition.
2. Disssaro Anthony, 'A Farewell to Harms: Against Presuming Irreparable Injury in Constitutional Litigation', Harvard Journal of Law & Public Policy, Vol. 35, Issue 2.

[1.0] Introduction

[1.1] This is the petitioner's renewed application by way of appeal against the refusal by a single judge of this Court to grant an order for stay of criminal proceedings in the Subordinate Court.

[1.2] The renewed application was brought by Notice of Motion pursuant to Order 10 rule 2 as read with Order 9 rule 20 (1) of the Constitutional Court Rules (CCR) and Order 59/13/2 of the Rules of the Supreme Court of England, 1999 Edition (RSC).

[1.3] The renewed application is based on the following grounds:

1. The learned Judge erred in law and fact when at page R12 of the Ruling dated 24th February, 2023, she failed to take judicial notice of the fact that the petitioner was being tried by the Subordinate Court termed the Economic and Financial Crimes Court under Cause No. 2SPE/024/22, as opposed to the ordinary Subordinate Court.
2. The learned Judge erred in law and fact when she endorsed the cases of C & S Investments, Ace Car Hire Limited, Sunday Maluba v The Attorney General and the case of Rajan Lekhraj Mahtani and John Sangwa v the People which hold that civil proceedings cannot be used to arrest criminal investigations or proceedings contrary to the position held in the Ruling of Milingo Lungu v Attorney General and Administrator General 2022/CCZ/006 wherein the Court stated that the Constitutional Court is mandated under Article 128 (2) of the Constitution of Zambia as amended by Act Number 2 of 2016 to have proceedings in any Court

whether civil or criminal to be stayed pending determination of the Constitutional issues.

[2.0] Background facts

- [2.1]** The facts leading to the renewed application are as stated in the affidavit in support sworn by Mr. Bowman Lusambo, the petitioner/ applicant herein as summarized below.
- [2.2]** That in a ruling delivered on 24th February, 2023, a single Judge of this Court declined to grant the petitioner's application for a stay of proceedings relating to the Economic and Financial Crimes Court (EFCC) of the Subordinate Court before, which the petitioner is arraigned for criminal charges.
- [2.3]** That the petitioner has filed a Petition in the Constitutional Court which has raised important constitutional issues relating to the propriety of the Economic and Financial Crimes Court both at High Court and Subordinate Courts levels.
- [2.4]** That if the application to stay proceedings was not granted, the applicant will be prejudiced and the Petition would be rendered academic.

[3.0] The Petitioner's Skeleton Arguments

[3.1] In the skeleton arguments in support of the renewed application, it was submitted that this Court has jurisdiction to hear and determine interim applications in accordance with the provisions of Order 10 rule 2 (1) of the CCR. Reliance was also placed on Order 59/13/2 of the Rules of the Supreme Court (RSC) 1999 Edition, which according to the petitioner states that a stay would be granted where special circumstances exist such as in the case before us.

[3.2] It was argued that the creation of the Economic and Financial Crimes Court (EFCC) at Subordinate Courts level, administratively, was in contravention of Article 120 (1) and (3) of the Constitution as it is now known that the use of the word prescription therein means by an Act of Parliament. Additionally, that in both sub-articles (1) and (3) of Article 120, the word "shall" is used, which means that there is no discretion in the manner in which the Subordinate Courts should be set up, classified or divided. There being no prescription creating the EFCC at Subordinate Courts level, the same is unconstitutional and illegal.

[4.0] The Respondent's Affidavit in Opposition and Skeleton Arguments

[4.1] The respondent opposed the petitioner's renewed application for stay of criminal proceedings before the Subordinate Court via an affidavit in opposition sworn by Josiah Simachela, the Chief State Advocate in the respondent's employ.

[4.2] The essence of the affidavit in opposition is that the petition revealed no good prospects of success. Further that, civil proceedings cannot be used to arrest criminal investigations or proceedings and that no prejudice would be occasioned if the matter in the Subordinate Court is not stayed.

[4.3] In the skeleton arguments, it was submitted that the single Judge was on firm ground in dismissing the petitioner's application for stay of proceedings. It was counsel's submission that the law was settled that civil proceedings cannot be used to arrest criminal investigations in the first instance and criminal proceedings in another. In support of this proposition, the case of **C & S Investments Limited, Ace Car Hire Limited, Sunday Maluba v The Attorney General¹** and that of **Rajan Lekhraj Mahtani and John Sangwa v The People²**, were cited.

[4.4] It was further submitted that there was no reason to depart from the jurisprudence as settled in the **Rajan Mahtani**² case and that the Supreme Court, in the case of **Zambia Revenue Authority v Professional Insurance Corporation Zambia**³, guided against shifting of positions by the superior courts.

[4.5] In rebutting the petitioner's argument that the classification and divisions of the Subordinate Courts should be by way of an Act of Parliament in accordance with Article 120 (3) (c), of the Constitution; and that there is no discretion in that regard; the respondent contended that the Criminal Procedure Code, Chapter 88 of the Laws of Zambia and sections 7 and 24 of the Subordinate Courts Act, prescribe powers and jurisdiction of the Subordinate Courts which cannot be usurped by administrative arrangements.

[4.6] With particular reference to ground one of appeal upon which the renewed application is sought, the respondent argued that the single judge did not err when she did not take judicial notice that the petitioner was being tried in the EFCC of the Subordinate Court. We were urged to uphold the single Judge's decision in this regard.

[4.8] With regards to ground two on which the petitioner impugned the single Judge's endorsement of the case of **C & S Investments**¹ and that of **Rajan Mahtani**², counsel submitted that the single judge was on firm ground in endorsing the said judgments. Counsel cited the case of **Fredson Kango Yamba v The Principal Resident Magistrate and others**⁴ which referred to the case of **Lloyd Chembo v The Attorney General**⁵, on comity of the Courts.

[5.0] **The Hearing**

[5.1] At the hearing of the application on 18th April, 2023, Mr. Zimba, who appeared for the petitioner, informed the Court that he would rely on the affidavit and skeleton arguments filed into Court. To augment the skeleton arguments, he reiterated that the creation of the EFCC at the Subordinate Court level should have been done by prescription. That according to Article 266 of the Constitution prescription means by an Act of Parliament which definition was in line with our decisions in the cases of **Dipak Patel v Ministry of Finance and Attorney General**⁶ and **Sean Tembo v Electoral Commission of Zambia and Attorney General**⁷. Therefore, since there was no Act of Parliament setting up the EFCC, it followed that there was a breach of the Constitution.

[5.2] Furthermore, that the alleged constitutional breach was meritorious and warranted the grant of a stay of proceedings in the Subordinate Court for good order and preservation of the status quo, as articulated by **Anthony Dissaro** in his article entitled 'A Farewell to Harms: Against Presuming Irreparable Injury in Constitutional Litigation'. That to allow the proceedings in the Subordinate Court to continue, would be rendering the petitioner's claim in the Petition to be moot.

[5.3] Counsel further argued that the celebrated ruling of this Court in the case of **Milingo Lungu v Attorney General**⁸ and the case of **C & S Investments Limited**¹ are distinguishable, in that the latter case involved judicial review proceedings and not an allegation of a constitutional breach as in the **Milingo case**⁸. For that reason, counsel beseeched us to grant the sought order of stay of proceedings in the Subordinate Court pending determination of the Petition which alleges constitutional breaches.

[5.4] In submitting on the single Judge's finding that there was nothing to show that the petitioner was appearing before the EFCC in the Subordinate Court under cause number 2SPE/024/22, counsel relied on the authority of **Shamwana and 7 others v The People**⁹. He

maintained that this Court should take judicial notice of proceedings under cause number 2SPE/024/22 to prove the existence of the EFCC at the Subordinate Court.

[5.5] The learned Solicitor General Mr. Muchende, SC, appeared for the respondent together with Principal State Advocates, Mr. Mulonda and Mr. Mwiya.

[5.6] The Solicitor General informed us that they would place reliance on the respondent's affidavit in opposition and skeleton arguments filed into court on 17th March, 2023. He submitted that there was no imminent danger or threat to the life and limb of the petitioner, which would warrant the granting of a stay by this Court. The case of **Hakainde Hichilema v Attorney General**¹⁰ was cited in aid of this argument.

[5.7] Regarding the petitioner's first ground of appeal, that the single Judge erred in not taking judicial notice that the petitioner was arraigned before the EFCC of the Subordinate Court, the Solicitor General submitted that the single Judge should not be faulted for declining to exercise her discretion to stay proceedings in the Subordinate Court.

[5.8] As regards the **Shamwana**⁹ case, which counsel for the petitioner relied on for the submission on judicial notice, it was the Solicitor General's submission that that case relied on or cited, the case of **Alfred Mulenga v The People**¹¹ in which the Supreme Court stated that whether the court is at liberty to take judicial notice, is dependent on the circumstances of a particular case.

[5.9] On the basis of the **Alfred Mulenga** case, it was the Solicitor General's submission that the single judge should not be faulted in being more cautious and requiring more information. To amplify, the Solicitor General referred to the case of **Gastove Kapata v The People**¹² which holds that the essence of judicial notice was to the effect that courts take cognizance of matters so notorious such that evidence need not be adduced to prove it. Therefore, the single judge did not err in this regard.

[5.10] In conclusion the Solicitor General submitted that it would not be enough to infer that a matter is before a particular Court simply by referring to the cause number as the Courts are not records management officers nor are they expected to know the index system of all Courts in the Republic, unless and until it is properly

brought to their attention. He prayed for the Court to dismiss the first ground.

- [5.11] Mr. Mulonda argued ground two. It was his submission that the decisions of **C & S Investments Limited**¹ and that of **Rajan Mahtani**² were still good law and that the respondent was alive to the fact that the said decisions related to judicial review proceedings. That notwithstanding, he urged us to apply the principle that civil proceedings should not be used to halt criminal proceedings or criminal investigations.
- [5.12] Counsel referred us to Article 120 (1) (a) of the Constitution and section 19 of the Subordinate Courts Act, on jurisdiction of these Courts and submitted that the petitioner did not prove that the Subordinate Court does not have jurisdiction to hear and determine criminal matters.
- [5.13] With regards to the petitioner's submission that the **Milingo**⁸ case stayed criminal proceedings in the Subordinate Court, counsel submitted that the ruling was by a single judge of this Court and not binding on the whole Court. Counsel further submitted that the case of **Milingo**⁸ was distinguishable from the current one in

that **Milingo**⁸ dealt with the petitioner seeking to use an immunity agreement as a defence whereas in *casu*, the petitioner was challenging the establishment of the EFCC in the Subordinate Court.

[5.14] Mr. Mwiya submitted on comity of courts within the Judiciary. Counsel referred us to our decision in **Henry Kapoko v The People**¹³ in which we stated that our decisions should not only generate incremental improvements in both substantive and procedural justice, but also should not jeopardize what has worked well in the past. In this regard, counsel submitted that granting the application would jeopardize the criminal proceedings in the Subordinate Court. To augment this submission, we were referred to the case of **Fredson Kango Yamba v The Principal Resident Magistrate and others**⁴ in which a single Judge of this Court dismissed a similar application on the principle of comity.

[5.15] In reply, Mr. Zimba, submitted in respect of the Court exercising a statutory duty not to be stopped, that Article 120 (3) (c) speaks to a prescription and that in the absence of an Act of Parliament, the EFCC is not exercising a statutory duty.

- [5.16] On the issue of prejudice, Mr. Zimba, submitted that there would be prejudice and injury of a constitutional nature, which is irreparable if the application was not granted. He submitted on the respondent's citation of the **Hakaïnde Hichilema**¹⁰ case that the same is distinguishable from the case before Court. Further that, the case of **Alfred Mulenga**¹¹ related to similar conduct in sentencing a convict and not judicial notice.
- [5.17] On the respondent's submission that courts are not expected to know cause numbers, counsel submitted that there was a ruling by Magistrate Hamaundu of the EFCC and that it was not proper to urge this Court to bury their heads in the sand and not be alive to what is happening within the Judiciary.
- [5.18] In reply to the submission that the **Milingo**⁸ case is distinguishable from the case before court, counsel submitted that the common thread in these matters was allegations of constitutional breaches. In support of this submission, counsel referred us to the case of **Liversidge v Anderson**¹⁴ in which Lord Atkin stated that laws speak the same language in war and in peace. He quipped that judges are no respecters of persons and stand between the

subject and an attempted encroachment. Counsel urged the Court to guard against any such encroachment.

[5.19] As regards the reference to Article 120 (1) (a) and section 19 of the Subordinate Courts Act on jurisdiction of the courts, counsel submitted that the same do not apply here because what was being challenged was a division of the Subordinate Court which was not in compliance with the law.

[5.20] Counsel further submitted that even though the respondent kept referring to the case of **C & S Investments Limited**¹ and that of **Rajan Mahtani**², the Court will note that the said cases dealt with criminal investigations and not criminal proceedings. On the other hand, the **Milingo**⁸ case dealt with criminal proceedings. Equally, that the case of **Fredson Yamba**⁴ related to sufficiency of particulars in an indictment and did not deal with matters that are before this Court. Counsel prayed that the application be granted and the proceedings in the Subordinate Court be stayed pending determination of the Petition.

[6.0] **Determination**

[6.1] We have considered the affidavit evidence, oral and written submissions made by both parties and the ruling of the single judge, which prompted the petitioner to file the renewed application. Essentially, the cardinal issue this case raises is, whether or not this Court can order stay of criminal proceedings before the Subordinate Court (or the EFCC as argued by the petitioner), pending determination of the Petition before it.

[6.2] To put matters in proper context, we find it prudent to state the provisions of the Constitutional Court Rules and the Rules of the Supreme Court pursuant to which the renewed application was made. Order IX rule 20 (1) of the Constitutional Court Rules (CCR) succinctly provides: "***An interlocutory application under the Act shall be by summons or notice of motion, as the case maybe***". While Order X rule 2 simply states: "***Despite any provision to the contrary, the Court may hear and determine an application for an interim order***". It is patent therefore, that the CCR provide for interlocutory and interim applications generally. The CCR do not specify or state the type of interlocutory application that can be made before this Court.

[6.3] This, in our view, explains why the petitioner also had recourse to Order 59/13/2 of the Rules of the Supreme Court of England, 1999 Edition (RSC), which specifically provides for stay of execution or proceedings pending appeal. We must hasten to state that Order 59/13/2 of the RSC is inapplicable in this case because the Petition, which is pending hearing before us is not an appeal. Order 59/13/2 provides for stay of execution or of proceedings pending the hearing of an appeal before an appellate Court. The Petition is not before us by way of appeal but in exercise of our original jurisdiction.

[6.4] We will therefore, consider the renewed application under Order IX rule 20 and Order X rule 2 of the CCR which as aforesaid provide for interlocutory applications generally. It must be borne in mind that the jurisdiction of this Court is as provided in Article 128 of the Constitution as follows:

128. (1) Subject to Article 28, the Constitutional Court

has original and final jurisdiction to hear-

- (a) a matter relating to the interpretation of the Constitution;**
- (b) a matter relating to violation or contravention of this Constitution**

- (c) a matter relating to the President, Vice President or an election of a President;
 - (d) appeals relating to election of Members of Parliament and councilors; and
 - (e) whether or not a matter falls within the jurisdiction of the Constitutional Court
- (2) Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court
- (3) Subject to Article 28, a person who alleges that-
- (a) an Act of Parliament or statutory instrument;
 - (b) an action, measure or decision taken under law; or
 - (c) an act, omission, measure or decision by a person or an authority;
- contravenes this Constitution, may petition the Constitutional Court for redress.

[6.5] Thus, the Constitutional Court has original jurisdiction in all matters alleging contravention of the Constitution and for interpretation of the Constitution. The Court has appellate jurisdiction in matters relating to appeals involving elections of Members of Parliament and councilors. Therefore, whatever interim or interlocutory order the Court issues must be in line with its jurisdiction as provided in the Constitution.

[6.6] Upon our further perusal of the Constitution, and with particular reference to an interim order for stay of proceedings, we are of the considered view that the Constitution provides for when a stay should be in place per Article 128 (2). Thus, a stay is incorporated within the provisions of the Constitution.

[6.7] What we deduce from Article 128 (2) is that, a Court in this current case for instance, the Subordinate Court where the petitioner is appearing for criminal charges should have determined that a question relating to the Constitution had arisen. Thereafter, it should on its own motion, have stayed the proceedings before it and referred the question to this Court for determination.

[6.7] To further illustrate that the Constitution incorporates a stay, with regards to stay of execution of judgment pending hearing of appeals before this Court, we elucidated in the case of **Law Association of Zambia v Attorney General**¹⁵ that a purposive interpretation of Article 73 (3) and (4) read together with Articles 57 and 128 (1) (d) shows that the Constitution provides for a stay of the High Court Judgment pending determination of the appeal in the Constitutional Court. Therefore, one need not apply for a

stay of execution of judgment pending appeal in this Court in line with Article 73 (3) and (4) as interpreted in the **Law Association of Zambia**¹⁵ case.

[6.8] We are therefore, of the firm view that although the CCR provide for application for interlocutory or interim orders, the interim order for stay is incorporated in the Constitution such that one need not apply for a stay in this Court. In this regard we are inclined to disagree with the **Milingo**⁸ ruling by the single judge for holding that Article 128 (2) mandates the Constitutional Court to stay proceedings pending determination of the Petition or matter before it as it is the court before which a question regarding the Constitution arises that should stay proceedings. We are mindful though that ruling was not challenged by way of appeal to the full Court.

[6.9] This Court's mandate is to hear the Petition or matters filed before it in line with Article 128 (1) of the Constitution and where circumstances of a case so demand, the Court will expedite the hearing of the matter.

We accordingly, find that the petitioner's renewed application for a stay in this Court is misconceived.

We accordingly, find that the petitioner's renewed application for a stay in this Court is misconceived.

[6.10] In addition, we note that it is trite law that there are no interlocutory appeals against rulings of the Subordinate Courts.

In *casu*, the petitioner applied for a stay before the magistrate with conduct of the criminal proceedings, which application was denied. This prompted the petitioner to sue the Attorney General in this Court by way of Petition alleging breach of Article 120 (1) and (3). He then made this interlocutory application to stay the proceedings in the Subordinate Court pending our hearing of the Petition.

[6.11] We are of the considered view therefore, that the application is a disguised appeal against the ruling of the magistrate, which declined to stay criminal proceedings before it. Thus, it is procedurally wrong and borders on abuse of court process. As matters stand, the ruling of the magistrate is in force and is not appealable. Hence, criminal proceedings against the petitioner must go on and legally cannot be stayed using the Petition in the Constitutional Court.

[6.12] Consequently, we find merit in Mr. Mwiya's arguments on comity between the courts. We wish to restate what we said in the cases of **Henry Kapoko v The People**¹³ that:

"The decisions of this Court should never turn the justice delivery system on its head. Our decisions should generate incremental improvements in both substantive and procedural justice, but they must not jeopardize what has worked well in the past."

[6.13] And in **Lloyd Chembo v Attorney General**⁵ that: "There is comity between the Courts. This Court works hand in hand with other courts so that matters before it and before other Courts are heard and determined in an orderly and efficient manner."

[6.14] Thus, as observed in the case of **Rajan Mahtani**² which followed the decision in **C and S case**, there are no interlocutory appeals in criminal matters and that the criminal justice system has its own procedure. Furthermore, that "It was for this reason that civil procedure must not be used to abort criminal investigations or prosecutions. To go round on an interlocutory appeal in criminal matters by way of judicial review is misconceived."

[6.15] We are alive to the fact that these decisions are not binding but persuasive to this Court. We cannot fault the single Judge for endorsing them. We hasten to state however, that the single

Judge contradicted herself when in one breath she concluded that civil proceedings cannot be used to arrest criminal proceedings and then in another stated that in exceptional circumstances this can be done. For avoidance of doubt, we wish to state that civil proceedings cannot be used to arrest criminal proceedings in any circumstance. Be that as it maybe, the current application fails for being misconceived as it is not supported by the Constitution under Article 128 (2).

[6.16] We further wish to state that the single Judge did not err when she did not take judicial notice of the fact that the petitioner was appearing before the EFCC. We agree with the Solicitor General that a Court can only take judicial notice of notorious facts and not contentious issues as the ones in *casu*. The single Judge, thus, properly exercised her discretion when she refused to stay criminal proceedings.

[6.17] In light of the preceding paragraphs we refuse to grant the renewed application for stay of criminal proceedings.

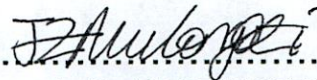
Each party to bear own costs.



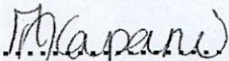
A. M. SHILIMI
DEPUTY PRESIDENT
CONSTITUTIONAL COURT



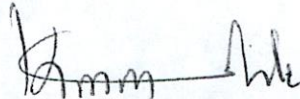
P. MULONDA
CONSTITUTIONAL COURT JUDGE



J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE



M. MAPANI - KAWIMBE
CONSTITUTIONAL COURT JUDGE



K. MULIFE
CONSTITUTIONAL COURT JUDGE