

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

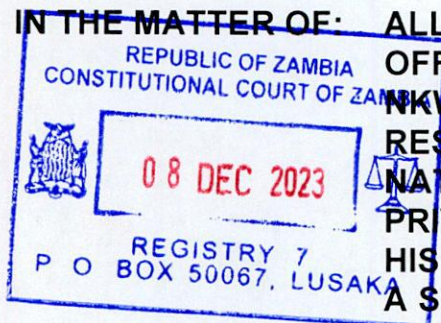
2023/CCZ/0014

IN THE MATTER OF: ARTICLE 128 (1) (b) AND (c) OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016.

IN THE MATTER OF: ARTICLES 173 (1) (g), 198(b), (iii) AND 198(d) OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO 2 OF 2016

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 91(3)(e), 173(1)(b), 173(1)(e), 198(b)(iii) AND 198(d) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ALLEGED REFUSAL OR NEGLECT TO OCCUPY THE OFFICIAL PRESIDENTIAL RESIDENCE CALLED NKWAZI HOUSE BY PRESIDENT HAKAINDE HICHILEMA RESULTING IN UNNECESSARY EXPENSES TO THE NATION OF COMMUTING BETWEEN THE PRESIDENT'S PRIVATE DWELLING LOCATED IN NEW KASAMA AND HIS OFFICE LOCATED AT STATE HOUSE AS WELL AS A SIGNIFICANT PUBLIC SAFETY COMPROMISE WHICH HAS SO FAR RESULTED IN THE DEATH OF ONE CITIZEN NAMED MIRRIAM TEMBO.



BETWEEN

SEAN TEMBO

PETITIONER

AND

THE ATTORNEY GENERAL

RESPONDENT

Coram: Shilimi - DPC, Sitali, Mulonda, Mulenga, Mulongoti, Mwandenga, and Mulife JJC on 28th October, 2023 and 8th December, 2023

For the Petitioner : In Person

For the Respondent: Mr. M. D. Kabesha SC, Attorney General, Ms C. Mulenga, Acting Chief State Advocate, Mr. N. Mwiya, Acting Principal State Advocate, Ms A. Chisanga, Acting Principal State Advocate and Ms A. M. Mungala, Senior State Advocate.

JUDGEMENT

Shilimi - DPC, delivered the Judgement of the Court

Cases Referred to:

1. Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another (2008) ZACC 8, 2008(5) SA94 (CC), 2008 (9) BCLR 865 (CC)
2. Kasturi Lal Lakshmi Reddy v State of J & K (1980) 4 SCC
3. Mozambique Constitutional Council, case No: 05/CC/2019
4. Economic Freedom Fighters and Another v Speaker of the National Assembly and Others CCT 143/15 and CCT 171/15
5. Malone v Metropolitan Police Commissioner (No. 2) (1979) 2 ALL ER 620 at 630
6. Isaac Mwanza v Attorney General, /2022/CCZ/009
7. Godfrey Malembeka v Attorney General, CCZ Selected Judgement No. 34 of 2017
8. Bernard Macdonald Christopher and Rosevelt Skerrit V The Attorney General of Dominica, Claim No. Domitcv, 2010/0287
9. Chishimba Kambwili v Attorney General, 2019/CCZ/009
10. Law Association of Zambia and Chapter One Foundation Ltd v The Attorney General, 2019/CCZ/0013/14
11. Charles Chihinga v New Future Financial Company Limited, 2020/CCZ/003

Legislation Referred to:

1. The Constitution 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

Works Referred to:

1. Halsbury Laws of England/Customs and Usage Volume 12 (1) (RE-ISSUE)/1

1.0 Introduction and background

[1.1] The Petitioner, a representative of a political party, registered as an association of persons under the Societies Act, Chapter 119 of the Laws of Zambia with a duty to defend the Constitution, filed a Petition on 17th May, 2023 against the Attorney General, being the Chief Legal adviser to the Government, alleging various breaches of the Constitution of Zambia (Amendment Act No. 2 of 2016) (the Constitution) on the part of the President of the Republic of Zambia.

[1.2] In his Petition, the Petitioner alleges that the President of the Republic of Zambia, Mr Hakainde Hichilema, has more than 20 months after assuming office, refused, neglected, declined and ignored to shift from his private residence in New Kasama to Nkwazi House located within the premises of State House along Independence Avenue in Lusaka, while operating from his designated office at State House. This, according to the Petitioner, has created a scenario where the President has to commute on an almost daily basis, from his private residence to State House.

[1.3] These trips, the Petitioner alleges, are characterised by high level security protocols which include a long convoy of motor vehicles cruising at high speed, closure of all roads adjoining the road used by the presidential convoy, loud noises emanating from the sirens of police vehicles and motor bikes, deployment of officers to line up the entire route and utilisation of multiple Zambia police motor vehicles to drop off and pick up police officers participating in route lining activities.

[1.4] The Petitioner further alleged that the refusal by the President to move to the official residence at Nkwazi House is premised on the President's self interest and desire for exaggerated luxury and opulence, with no regard whatsoever to the prudent use of resources of the country.

2. The Petitioner's Case

[2.1] The Petition is supported by an Affidavit verifying facts and sworn by the Petitioner as well as skeleton arguments.

[2.2] The Petitioner alleges the following contraventions of the Constitution:

- a) That the continued refusal or neglect by the President to shift to Nkwazi House and his insistence to commute on an almost daily

basis from his private residence in New Kasama to his office at State House amounts to imprudent use of public resources, does not promote fair and equitable use of public resources, results in loss of economic productivity and unnecessary inconvenience to the general public and contravenes Articles 198 (b) (iii) and 198 (d) of the Constitution.

- b) That the President's refusal or neglect to shift and his insistence to commute on a daily basis from his private residence in New Kasama to his office at State House does not promote and protect the right to life of citizens and is a present danger to the public safety of citizens in Chalala compound and contravenes Articles 91 (3) (e) of the Constitution as read together with Article 12 of the Constitution.
- c) That the continued refusal by the President to shift and his insistence to commute on a daily basis from his private residence in New Kasama to his office at State House does not promote the efficient and effective use of economic resources and does not promptly respond to the needs of the people and contravenes Articles 173 (1) (b) and 173 (1) (e) of the Constitution.

[2.3] As a result of the above stated alleged contraventions, the Petitioner seeks the following reliefs:

- a) A declaration that the continued refusal or neglect by the President to shift and his insistence to commute almost on a daily basis from his private residence in New Kasama to his office at State House amounts to imprudent and irresponsible use of public resources, does not promote fair and equitable use of public resources, results in loss of economic productivity and unnecessary inconvenience to the general public and contravenes Articles 198 (b) (iii) and (d) of the Constitution.
- b) A declaration that the continued refusal or neglect by the President to shift and his insistence to commute on a daily basis from his private residence in New Kasama to his office at State House does not promote and protect the right to life of citizens and is a present danger to the public safety of citizens in Chalala compound and contravenes Articles 91 (3) (e) of the Constitution as read together with Article 12.
- c) A declaration that the continued refusal by the President to shift and his insistence to commute on a daily basis from his private residence in New Kasama to his office at State House does not promptly respond to the needs of the people and contravenes Articles 173 (1) (b) and (e) of the Constitution.
- d) An order that costs for this Petition be borne by the Respondent to this cause; and
- e) Any other reliefs that the court may deem necessary and appropriate.

[2.4] In his skeleton arguments, the Petitioner alleged that the cost related to the President commuting from his private residence in New Kasama to State House in terms of fuel and maintenance for approximately twenty motor vehicles, together with the cost of deploying approximately one thousand police officers for route lining purposes is estimated at ZMW 126,945,107.84 per annum which

according to him, is a waste of public resources and contravenes Articles 173 (1) (b), and 198 (b) (iii) and (d) which provide that:

173 (1) The guiding values and principles of the public service include the following-

(b) Promotion of efficient, effective and economic use of national resources;

198 The guiding principles of public finance include the following:

**(b) promotion of a public finance system that ensures that-
(iii) expenditure promotes the equitable development of the country.**

(d) prudent and responsible use of public resources.

[2.5] He argued that the Constitution articulates the values binding the people and guiding and regulating Government in its governance of the country. He stated that a crucial element of the constitutional vision was to make a decisive break from unchecked abuse of state power and resources which according to him, was virtually institutionalised during the one-party era. He argued that in addition to national values and principles enacted by Article 8 of the Constitution, the people of Zambia further adopted constitutional values and principles of the public service which include promotion of efficient, effective and economic use of national resources as outlined in Article 173 (1) (b) above.

[2.6] In support of this argument, he cited the decision of the South African Constitutional Court in the case of **Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another¹** at paragraph 80, where Madala J, stated:

Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillars of this democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. In a state predicated on a desire to maintain the rule of law, it is imperative that one and all should be driven by a moral obligation to ensure the continued survival of our democracy.

[2.7] The Petitioner argued further that, the President commuting on a daily basis and in the process incurring an unnecessary expense of approximately ZMW 126 million per annum, when an official residence is available which only requires minimum renovations, can hardly meet the standards set by the Constitution in Article 173 (1) (b), that national resources must be used in an economic and efficient manner.

[2.8] He also argued that Article 198 (d) of the Constitution requires that those responsible for managing public resources must do so prudently and responsibly noting that the actions of the President were not in conformity with this constitutional provision.

[2.9] The Petitioner in support of this argument further referred the Court to the Indian Supreme Court case of **Kastuvi Lal Lakshmi Reddy v State of J & K²** in which the Court stated:

This court is duty bound to interfere whenever the government acts in a manner which is unreasonable and contrary to public interest. In succinct, the Government cannot act in a manner, which would benefit a private party at the cost of the State, such an action would be both unreasonable and contrary to public interest.

[2.10] He referred the Court to the statements of the UPND, the Ruling Party's Secretary General and the Presidential Spokesperson in which the Secretary General is said to have stated that the President was more comfortable at his private residence which was said to be a better house and the spokesperson is said to have said that Nkwazi House needs a lot of work for anyone to live there. He submitted that he did not wish to speculate the real reasons why the President does not want to shift to Nkwazi House, the gazetted residence of the President, other than to rely on the reasons stated by himself, his spokesperson and senior party officials. He concluded that both the reason of "more comfortable" and "huge cost" to renovate Nkwazi House were flimsy and unreasonable.

[2.11] With regard to the equitable development of the country limb of his submissions, it was the Petitioner's argument that in a country where many students in schools lack desks and many other

citizens are unable to access clean water and medicine in public hospitals, the cost of the President commuting from his private residence to State House is not equitable and contravenes Article 198 (b) (iii) of the Constitution. In support of his argument, he referred the Court to the decision of the **Mozambique Constitutional Council**³ in which the Council held that the loans made to companies, Credit Suisse and VBT, were null and void because they were unconstitutional and incurred in violation of the country's budget law.

[2.12] He further cited the case of the **Economic Freedom Fighters and Another v Speaker of the National Assembly and Others**⁴ in which the South African Constitutional Court held that:

Public office bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

[2.13] With regard to the issue of promotion and protection of the right to life of citizens, it was the Petitioner's submission that as a result of the Presidential convoy passing through the densely populated residential area of Chalala at extremely high speeds, there has been a high number of road traffic accidents involving the Presidential convoy and ordinary motorists thereby compromising

the public safety of citizens that live in and around Chalala and cited as an example, the death of one Mirriam Tembo due to an accident involving a police motor bike in a presidential motorcade.

[2.14] That Article 91 (3) (e) of the Constitution when read together with Article 12 requires that the President should, in exercise of the executive authority of the State, promote and protect the rights of citizens, including the right to life.

[2.15] In orally augmenting his written submissions, the Petitioner submitted that his Petition was about the ability to hold elected leaders accountable for the use of tax payers' money, the need to protect lives and the need to compel the President to shift to Nkwazi House which is the official residence of the head of State. This, he submitted, would save the nation financial resources.

[2.16] He further submitted that the issue with regards to the threat to life occasioned on the public was very important and especially the lives of those living in Chalala, where the presidential motorcade has to pass at very high speed on almost a daily basis. That one life, that of one Mirriam Tembo had already been lost, killed by the Presidential motorcade as it sped through Chalala.

3 Respondent's case

[3.1] The Respondent filed an Answer to the Petition and Affidavit in opposition to the Petition both dated 13th June, 2023.

[3.2] In his Answer to the Petition, the Respondent stated that the accommodation of past Heads of State at State House was only a matter of practice or custom. He further stated that the residence of the President at State House is in a dilapidated state and requires renovations.

[3.3] The affidavit in opposition was sworn by Mr Albert Malama, Permanent Secretary in the Ministry of Infrastructure, Housing and Urban Development. He deposed that there is no law which prescribes where the Zambian Head of State must be accommodated. He further deposed that the accommodation of past Heads of State at State House was only a matter of practice or custom and that the residence of the President at State House is in a dilapidated state requiring renovations at an astronomical amount.

[3.4] The Respondent's case was further supported by skeleton arguments also filed on 13th June, 2023. Therein, and with regard to the allegation that the President's decision to commute from his house in New Kasama to his office at State House had led to a

breach of Article 198 (b) (iii) and (d) of the Constitution and in particular in relation to expenditure that promotes the equitable development of the country and prudent and responsible use of public resources, it was contended that the argument is misconceived.

[3.5] It was argued that the President remaining at his own private residence instead of shifting to State House does not constitute an imprudent and irresponsible use of national resources nor breach the guiding principles of public finance as set out in Article 198 of the Constitution, but has been necessitated by the decision of the Ministry of Infrastructure, Housing and Urban Development not to immediately renovate State House which is in a dilapidated state due to the estimated astronomical costs involved. Further, that proceeding with the renovations would in the Ministry's considered view, not be a prudent and responsible use of resources when considered against the competing needs of the general public.

[3.6] The Respondent further urged the court to take judicial notice of the fact that Zambia was currently servicing huge financial debts of US\$ 30,075,120,811.00, and submitted that the expense of renovating

State House could not therefore be justified under the circumstances.

- [3.7]** It was also submitted that contrary to the Petitioner's allegations that the President has no compelling reasons for his refusal to shift into State House, and that past presidents had happily occupied State House, the compelling reasons are reflected in the fact that it is part of the public record that State House is in a state of disrepair and requires renovations which have not been done due to the estimated astronomical costs involved.
- [3.8]** It was the Respondent's submission that the President living at State House would not mean the President would eternally remain at State House. That the President regularly travels in the exercise of his executive duties and would inevitably be required to travel even from State House to various parts of the country. It was noted further that the President's travel is of necessity characterised by the convoy moving at high speed as part of the security protocols.
- [3.9]** With regard to the Petitioner's argument that the alleged continued refusal by the President to shift to State House does not promote the efficient and effective use of economic resources and does not promptly respond to the needs of the people, in breach of Article 173

(1) (b) and (e) of the Constitution, the Respondent submitted that the decision not to proceed with the renovation of State House, was in fact, in keeping with the guiding values and principles of the public service as enumerated by Article 173 (1) (b) and (e) of the Constitution which both promote the efficient, effective and economic use of national resources and are a prompt, efficient and timely response to the needs of the people.

[3.10] That the focus of the Government has been on efficiently responding to the needs of the public through the Constituency Development Fund (CDF) which follows the principle under Article 173 (1) (b) and (e) of the Constitution. Further, that the President's actions are also in keeping with the guiding principles of public finance set out by Article 198 (b) (iii) which requires a public finance system that ensures that expenditure promotes the equitable development of the country.

[3.11] With regard to the use of the word "custom" in its Answer to the Petition on the practice and custom of past Presidents to reside at State House, it was submitted that the use of the word "custom" was merely to denote habit as the practice of Presidents residing at State House had not attained the status of an immemorial custom that has

the force of law. The Court was referred to paragraph 607 of the **Halsbury's Laws of England/Customs and Usage Volume 12 (1) (REISSUE)/1** which states that for a custom to have the force of law, the following must be true of it:

To be valid, a custom must have four essential attributes:

- 1) It must be immemorial;
- 2) It must be reasonable;
- 3) it must be certain in its terms, and in respect both of the locality where it is alleged to obtain and of the persons whom it is alleged to affect; and
- 4) It must have continued as of right and without interruption since its immemorial origin. These characteristics serve a practical purpose as rules of evidence when the existence of a custom is to be established or refuted.

[3.12] That in order to establish that a custom is immemorial, the learned authors of **Halsbury's Laws of England** have stated at paragraph 606 that:

Every custom must have been in existence from a time preceding the memory of man, a date which has long been fixed for legal purposes at the year 1189, the commencement of the reign of Richard 1. Where, however, it is impossible to show such a continued existence, the courts will support the custom if circumstances are proved which raise a presumption that the custom existed at that date. Evidence showing continuous use as of right as far back as living testimony can go is regarded as raising this presumption.

[3.13] It was submitted that the practice of Presidents of the Republic of Zambia residing at State House, does not meet two of the above characteristics and is therefore not a custom with the force of law as it is not an immemorial practice and has also not been practiced

without interruption, as the current President has not moved into State House.

[3.14] That the practice of Presidents of the Republic of Zambia residing at State House can be traced only to 1964 when the first President moved into State House, long after the date set for identifying an immemorial custom (1189).

[3.15] It was further submitted that State House is simply linked in the minds of citizens as a national symbol of the Presidency as it in the colonial times, accommodated Governors and was thereafter used to accommodate the first President of the Republic of Zambia, and the subsequent Presidents. It's status as a national symbol is however not formally or legally recognised.

[3.16] Finally, it was the Respondent's submission that the Petitioner had in his Petition alleged several breaches to the Constitution, but had notably not cited the particular Article or law which mandates the President to actually reside at State House. This, is notable because there is in fact no law which requires that the President must be accommodated at State House, noting that the accommodation of Republican Presidents at State House was merely a practice or custom which does not have the backing of the law.

[3.17] In support of the above submission, the Respondent cited the observation of **Sir Robert Megarry V-C in Malone v Metropolitan Police Commissioner⁵** in which he stated:

England is not a country where everything is forbidden except what is expressly permitted: it is a country where everything is permitted except what is expressly forbidden.

[3.18] It was argued that similarly, Zambia is not a country where everything is forbidden except what is expressly permitted. That therefore, since there is no law which forbids the President from residing at a place other than State House, the President may reside where he chooses and that there is therefore no breach of any legal or constitutional provisions pursuant to which the Petitioner may successfully ground his cause.

[3.19] In orally augmenting the written submissions, the Respondent submitted that the Petitioner had framed the failure of the Ministry of Infrastructure, Housing and Urban Development to renovate Nkwazi House as a deliberate decision made by the President and had made reference to statements issued by the Presidential spokesperson, Anthony Bwalya, the United Party for National Development (UPND) Secretary General, Batuke Imenda and the Republican Vice President, Mutale Nalumango, as proof of the

President's decision. That statements made by one of these people is not proof that the President has made a decision. He referred the Court to Article 93 (1) of the Constitution which provides that a decision or instruction of the President shall be in writing. He further drew the attention of the Court to the decision of this Court in the case of **Isaac Mwanza v Attorney General**⁶, noting that when it comes to a decision of the President, writing is key, and without writing it cannot be deemed that the President had decided not to be accommodated at State House.

[3.20] The Respondent further submitted that although the Petitioner had repeatedly used the term gazetted residence with reference to State House to give the impression that there is a mandatory requirement for the President to be accommodated at State House, there is in fact no law or constitutional provision which requires that the President must be accommodated at State House. That the accommodation of the President at State House is merely a practice which has no legal backing.

[3.21] It was argued that the gazette which was being referred to by the Petitioner had not been produced before the Court contrary to the requirements of Order (VI) of the Rules of the Constitutional Court,

Statutory Instrument No. 37 of 2016. That Order (VI) provides that the Government gazette in Zambia or a government gazette of any Commonwealth Country may be proved by the production of the Government gazette. It was submitted that the Court should find that there is no merit in the Petitioner's assertion that State House is the gazetted residence for the President.

[3.22] It was submitted that the issue of protection of life should have been submitted in the High Court under the Bill of Rights. That this Court had pronounced itself on the right forum on matters pertaining to protection of life or the Bill of Rights in general. Reference was made to the case of **Godfrey Malembeka v The Attorney General and The Electoral Commission of Zambia**⁷ where this Court guided that actions relating to the enforcement of the rights and freedoms contained in part III of the Constitution must be commenced in the High Court. It was submitted that arguments touching on the Bill of Rights are improperly before this court and should be dismissed.

[3.23] The Court was also referred to the persuasive decision of the Caribbean Supreme Court on the threshold that was set for a Petitioner to succeed in an action alleging contravention of the Constitution in the matter of **Bernard Macdonald Christopher and**

Roosevelt Skerrit v The Attorney General of Dominica⁸ in which the Supreme Court guided that:

A claimant who seeks to claim breach of constitutional provisions should show on the face of the pleadings the nature of the alleged violation or contravention that is being ascertained.

The court went on to further state that:

The allegation grounding this violation must be serious.

[3.24] It was argued that there being no law compelling the President to reside at State House, the allegations contained in this Petition are not serious and that we should adopt the reasoning of the Caribbean Supreme Court in the Skerrit case.

[3.25] With regard to the Petitioner's oral submission in which he urged this Court to compel the President to shift to Nkwazi House, notwithstanding that the reliefs being claimed by the Petitioner are all declaratory in nature, it was submitted that this Court should restrict itself to the declaratory reliefs being sought as the Petitioner had not pleaded mandamus.

[3.26] The Court was in this regard referred to its decision in the case of **Chishimba Kambwili v The Attorney General⁹** at page J39 where citing Black's Law Dictionary it stated:

Black's Law Dictionary, 8th Edition at page 859 a "declaratory Judgment" is defined as follows.

“A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement”.

[3.27] It was, based on the above decision, submitted that an order compelling the President to shift to Nkwazi House was not tenable in this Petition.

4.0 Petitioner’s Reply

[4.1] In reply to the Respondent’s submission that the failure by the Ministry of Infrastructure, Housing and Urban Development to renovate Nkwazi House should not be blamed on the President, the Petitioner requested the Court to take judicial notice of the fact that the Minister of Infrastructure, Housing and Urban Development is not only an appointee of the President, but also reports to and is supervised by the President.

[4.2] The Petitioner also submitted that although the Respondent had submitted that there is no law that compels the President to reside at Nkwazi House, he had admitted that Nkwazi House had been the residence of Zambia’s past six presidents. Further, that his argument was that the president commuting from his private residence to his office, resulted in a wastage of public financial resources.

[4.3] It was further submitted that there is a law, Article 173 (1) of the Constitution, which guards against wastage of public financial resources.

[4.4] Finally, it was the Petitioner's submission that although it was not the first time that a Presidential motorcade was involved in a road traffic accident, it was the first time that a pedestrian was killed by a presidential motorcade for the reasons outlined and argued in the Petition.

5. Consideration and Decision

[5.1] We have carefully considered the Petition before us, the affidavit verifying facts, the skeleton arguments, and list of authorities filed in support of the Petition and the Petitioner's oral arguments. We have also considered the Respondent's Answer to the Petition, affidavit in opposition, skeleton arguments and list of authorities filed and counsel's oral arguments in opposition to the Petition.

[5.2] Article 128(1) of the Constitution sets out the jurisdiction of this Court and provides as follows:

Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear -

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

- (c) a matter relating to the President, Vice President or an election of the President;
- (d) appeals relating to election of Members of Parliament and Councillors;
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.

Article 128(3) further provides as follows:

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 any 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.

[5.3] Arising from the above provisions, it is clear that this Court enjoys exclusive jurisdiction over constitutional matters subject to Article 28 of the Constitution. In the case of the **Law Association of Zambia and Chapter One Foundation Ltd v The Attorney General**¹⁰, we stated that the jurisdiction of this Court though extensive, is still limited by the Constitution itself in Article 128 which is subject to Article 28.

[5.4] The central issue that this Petition raises as we see it, is whether the Respondent has contravened Articles 173 (1) (b) and (e), 198 (b) (iii) and (d) of the Constitution by the President residing at his private residence and not Nkwazi House at State House.

[5.5] Articles 173 (1) (b) and (e) and 198 (b) (ii) and (d) provide that:

173 (1) The guiding values and principles of the public service include the following -

- (b) promotion of efficient, effective and economic use of natural resources;
- (e) prompt, efficient and timely response to people's needs

198 The guiding principles of public finance include the following –

- (b) promotion of a public finance system that ensures that:
 - (iii) expenditure promotes the equitable development of the country;
- (d) prudent and responsible use of public resources.

[5.6] It is clear that the above stated provisions do not provide for the President's official residence. They are provisions on guiding values and principles of the public service and principles relating to public finance.

[5.7] Further, and as stated in paragraphs 3.20 and 3.21, the Petitioner has equally failed to produce the Government Gazette which provides that the President should reside at Nkwazi House located at State House.

[5.8] The Petition also alleges contravention of the Constitutional provisions referred to in paragraph 5.5 above by the President's refusal or neglect to take up residence at Nkwazi House located at State House which has resulted in commuting related expenses estimated at ZMW 126,945,107.84 per annum by the President commuting between his private residency and State House.

- [5.9]** The refusal or neglect to shift has not been proved in view of the Respondent's submission that this has been necessitated by the decision not to immediately renovate Nkwazi House at State House which is in a dilapidated state, due to the high cost of renovations. The Petitioner has also failed to prove that the President had made a decision not to shift to Nkwazi House in terms of Article 93(1) of the Constitution. Further there is no veracity on the estimated costs provided by the Petitioner.
- [5.10]** Furthermore, in the absence of any Constitutional or Statutory provision that compels the President to reside at Nkwazi House at State House, and the production of a Government gazette that designates Nkwazi House as the official residence of the President, the claims for violation of Articles 173(1)(b) and (e) and 198(b)(ii) and (d) are dismissed for lack of merit.
- [5.11]** We now wish to consider the issue of the promotion and protection of the right to life. It was the Petitioner's argument that the President's refusal or neglect to shift and his insistence to commute on a daily basis from his private residence to State House does not promote and protect the right to life. In his response, the Respondent submitted that the issue relating to the right to life was improperly before this court

and should have been brought before the High Court under the Bill of Rights and referred the court to the case of **Godfrey Malembeka v The Attorney General and The Electoral Commission of Zambia**⁷ in which the court guided that actions relating to enforcement of the rights and freedoms contained in Part III of the Constitution must be commenced in the High Court.

[5.12] We agree with the Respondent's submissions that this claim is improperly before us for the court's want of jurisdiction over the Bill of Rights. In this respect we wish to reiterate our decision in the **Malembeka case**⁷ where we stated that:

In terms of Article 28 (1) of the constitution, the jurisdiction to enforce the provisions of Part III of the Constitution under which Article 18 and Article 23 fall, is vested in the High Court. This court in terms of Article 128 (1), has no jurisdiction to enforce the provisions of Article 11 to 26 of the Constitution. We have previously guided that actions relating to the enforcement of the rights and freedoms contained in Part III of the Constitution must be commenced in the High Court.

[5.13] In view of the above, it is our considered view that this is not the right court before which to seek the relief relating to the right to life. We cannot entertain this claim and it is therefore dismissed.

[5.14] Finally, the Petitioner in his oral arguments urged this court to compel the President to shift to State House. The Respondent, however, argued that the reliefs being claimed by the Petitioner are all

declaratory in nature and an order compelling the President to shift to State House is not tenable.

[5.15] We find merit in the Respondent's submission and in this respect, we are fortified by our decision in the case of **Chishimba Kambwili v The Attorney General**⁹ in which we at page J39 stated as follows:

Black's Law Dictionary, 8th Edition, at page 859, defines a "declaratory judgment" as follows:

"A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement."

[5.16] The reliefs being sought in the Petition being declaratory in nature, an Order compelling the President to shift to State House is not tenable. In any event, there is no law that compels the President to reside at State House.

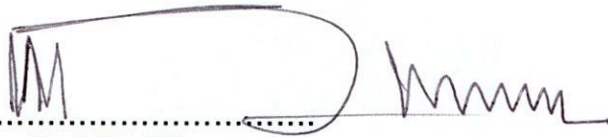
6.0 Conclusion

6.1 We find that in the absence of any constitutional provision or any other law that compels the President to reside at State House, and in light of the Respondent's submission on the dilapidated state of Nkwazi House requiring high cost of renovations, the alleged constitutional breaches relating to the President's alleged refusal to shift to State House lacks merit and is misconceived.

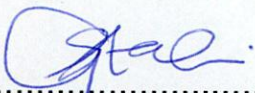
6.2 We find that the alleged breach relating to the right to life is improperly before this court for want of jurisdiction over Part III of the Constitution.

6.3 Consequently, the Petition is wholly dismissed forthwith for lack of merit.

6.4 We make no order as to costs.



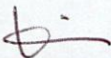
.....
A. M. SHILIMI
DEPUTY PRESIDENT – CONSTITUTIONAL COURT



.....
A. M. SITALI
CONSTITUTIONAL COURT JUDGE



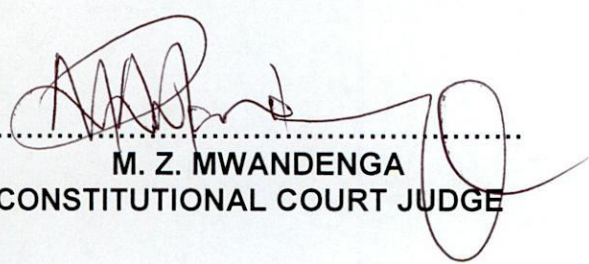
.....
P. MULONDA
CONSTITUTIONAL COURT JUDGE



.....
M. S. MULENGA
CONSTITUTIONAL COURT JUDGE



.....
J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE



.....
M. Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE



.....
K. M. MULIFE
CONSTITUTIONAL COURT JUDGE