



IN THE CONSTITUTIONAL COURT

2023/CCZ/0024

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)

IN THE MATTER OF:

ARTICLES 1(1), 2 AND 128 OF THE
CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF:

THE INTERPRETATION OF ARTICLE
74(2) OF THE CONSTITUTION OF
ZAMBIA (AMENDMENT) ACT NO. 2
OF 2016

IN THE MATTER OF:

ORDER IV RULE 2(2) OF THE
CONSTITUTIONAL COURT RULES,
2016

BETWEEN:

INSTITUTE OF LAW, POLICY RESEARCH
AND HUMAN RIGHTS LIMITED

APPLICANT

AND

ATTORNEY GENERAL
BRIAN MUNDUBILE

RESPONDENT
INTENDED INTERESTED PARTY

*Before the Hon. Mr. Justice M.K. Chisunka on 11th January, 2024 and
17th January, 2024*

APPEARANCES:

For the Applicant:

Mr. M. Mwango and Mr. F.S. Chipompela – Messrs. Joseph Chirwa and Company.

For the Respondent:

Mr. C. Mulonda – Principal State Advocate, Attorney General's Chambers.

For the Intended Interested Party:

Mr. P. Chulu – Messrs. Patrick Chulu Legal Practitioners.

R U L I N G

Cases referred to:

1. Simbeye Enterprises Limited and Others v Ibrahim Yousuf, S.C.Z Judgment No. 35 of 2000
2. Mulenga and Others v Chikumbi and Others, (2006) Z.R. 33
3. Jonasimba v Attorney General, 2022/CCZ/007
4. Dan Pule and Others v Attorney General and Others, 2017/CC/0004, Ruling dated 15th August, 2017

Legislation referred to:

1. The Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

Introduction

1. This Ruling decides an application for an order for leave to join the Intended Interested Party to the main proceedings in this cause. The application was made by the Intended Interested Party pursuant to Order V Rule 6(1) of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (CCR).

Background

2. The background to this application is that the Applicant commenced an action by way of Originating Summons on 10th November, 2023, against the Respondent pursuant to Order IV Rule 2(2) of the CCR. The Originating Summons seeks an interpretation of Article 74(2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (Constitution).
3. On 1st December, 2023, the Intended Interested Party filed this application for leave to join the main proceedings as an interested party. The application was made by way of *ex parte* summons. I ordered that I would hear the matter *inter partes*.

The Intended Interested Party's Affidavit Evidence and Arguments in Support of the Application for Joinder

4. The application was supported by an affidavit sworn by the Intended Interested Party, list of authorities and skeleton arguments. The affidavit evidence in support of the application for joinder was to the effect that:

4.1. The Intended Interested Party was a senior member of the largest opposition political party, namely, the Patriotic Front (PF). In or around August, 2021, he was elected as the Leader of the Opposition in Parliament. He held this position until recently when the Speaker of the National Assembly unlawfully removed him from that position and declared one Robert M. Chabinga as the Leader of the Opposition.

4.2. The preceding factual events are what triggered the commencement of the Originating Summons seeking an interpretation of Article 74(2) of the Constitution in this cause.

4.3. The Court's interpretation of Article 74(2) of the Constitution will determine whether or not the Intended Interested Party's removal as Leader of the Opposition and the appointment of Robert M. Chabinga in that position was constitutional. Thus,

the final decision in this matter will affect the Intended Interested Party.

- 4.4. This is, therefore, a proper case in which the Intended Interested Party may be joined to the proceedings so that all the issues in controversy can be determined. Further, that the Respondent would not suffer any prejudice if this application is granted.
5. The Intended Interested Party's written skeleton arguments in support of the application for joinder were to the effect that he has an interest in the main matter because its outcome is likely to affect him and as such his joinder is necessary so that all matters in dispute are permanently resolved. For this submission, reliance was placed on the case of ***Simbeye Enterprises Limited and Others v Ibrahim Yousuf.***¹
6. At the hearing, Counsel for the Intended Interested Party entirely relied on the summons, affidavit in support, list of authorities and skeleton arguments in support of the application for joinder.

Affidavit Evidence and Arguments in Opposition to the Application for Joinder

7. In opposing the application for joinder, the Respondent filed an affidavit in opposition, list of authorities and skeleton arguments on 11th December, 2023. The affidavit in opposition was sworn by the Attorney General and it disclosed that the Originating Summons herein is for interpretation of Article 74(2) of the Constitution only and it does not involve the determination of individual rights.
8. In the written skeleton arguments opposing the application for joinder, the Respondent relied on the cases of *Mulenga and Others v Chikumbi and Others*,² and *Jonas Zimba v Attorney General*,³ and submitted that:
 - 8.1. The Intended Interested Party's application for joinder raises contentious or personalised issues. This goes against the provisions of the law and as such the application should not be entertained.
 - 8.2. The mere fact that the Intended Interested Party was affected by the facts as stated in his affidavit in support of the application did not entitle him to be joined to these proceedings.
 - 8.3. The interest of the public and that of the Intended Interested Party in this cause is protected by the Attorney General.

9. In augmenting the written arguments, Counsel for the Respondent argued that the relief sought in the Originating Summons did not create any rights for any person. Thus, the absence of the Intended Interested Party in these proceedings would not prejudice him. Counsel invited the Court to take judicial notice of similar cases before the Court namely, Moses Moyo v Attorney General and Miles Bwalya Sampa v Brian Mundubile. Counsel did not provide the cause numbers for these cases.

The Applicant's Position vis-à-vis the Application for Joinder

10. Counsel for the Applicant informed the Court that the Applicant did not object to the application for joinder.

Issue for Determination

11. I have considered the application for joinder as an interested party together with the affidavit evidence, list of authorities and the skeleton arguments filed by the parties. The main issue that falls for determination is whether or not I should exercise my discretion to grant the application for leave to join the Intended Interested Party as an interested party to the main proceedings.

Evaluation and Determining the Issue

12. A convenient starting point is the law upon which the present application was anchored on, namely, Order V Rule 6(1) of the CCR. It provides that a person may, with leave of the Court, make an application to be joined as an interested party. An interested party is defined in Rule 2 of the CCR to mean a person or entity directly involved in the litigation that has an identifiable legal interest in the proceedings, a stake in the process or failure of the litigation, or a legal duty to participate in, or observe, the proceedings.
13. Further, Order V Rule 4 of the CCR provides that the Court may, at any stage of the proceedings and on such terms as may appear just, join any person whose presence before the Court may be necessary to enable it adjudicate upon and settle the matter. Thus, there is a provision for joinder of parties in the CCR. It is plain from Order V Rules 4 and 6 of the CCR that the decision whether or not to join a party to proceedings is discretionary.
14. It is clear from the foregoing that in order for a person to be joined to an action it must be shown that, that person has sufficient interest in the subject matter of the action. This was the position of the Court in the case of ***Dan Pule and Others v Attorney General and Others***.⁴ This position is echoed in Rule 2 of the CCR alluded to in paragraph

- 12 of this Ruling. The sole question for consideration therefore, is whether the Intended Interested Party has sufficient interest to warrant a joinder and not whether his interest is protected by any other party to these proceedings.
15. In this case, the cause of action in the Originating Summons is based on a factual situation regarding the Speaker's role in the removal and election of the Leader of the Opposition in the National Assembly under Article 74(2) of the Constitution. This factual situation has also been relied on by the Respondent to oppose the cause of action herein. Both the Applicant and the Respondent specifically name the Intended Interested Party as a person who was elected and subsequently removed from the position of Leader of the Opposition in the National Assembly.
 16. It is, therefore, undisputed that the Intended Interested Party is the person that was removed as Leader of the Opposition in the National Assembly. This is the crux of the Intended Interested Party's interest in these proceedings as shown in his affidavit in support of the joinder application.
 17. I, therefore, take the view that the facts contained in the affidavit in support of the joinder application merely serve to show the Intended Interested Party's interest. This interest, or lack thereof, would inform

whether or not he may be joined to these proceedings. In view of this, I find that the facts in support of the application for joinder do not personalise or change the non contentious nature of the Originating Summons.

Conclusion

18. Consequently, on the facts set out, my considered view is that the Intended Interested Party has sufficient interest in this matter because he would be directly affected by the Court's interpretation of Article 74(2) of the Constitution. Thus, the Intended Interested Party has a stake in the outcome of this litigation and his participation is necessary to ensure that all issues in the main proceedings are adjudicated upon and determined to finality. I therefore find merit in the Intended Interested Party's application for joinder as an interested party.
19. Premised on the foregoing, I find that this is a proper case in which I can exercise my discretion in favour of the Intended Interested Party.
20. In closing, I would mention that I do not see the relevance of the cases Counsel for the Respondent asked me to take judicial notice of at this preliminary stage. This is purely an interlocutory application and not

a determination of the main matter. In any event, Counsel did not explain the relevance of these cases to the application for joinder.

Orders

21. Accordingly, I make the following orders:

21.1. I hereby grant the Intended Interested Party leave to join the main proceedings as an interested party.

21.2. The Interested Party shall file skeleton arguments and list of authorities on or before 23rd January, 2024.

21.3. The Applicant and the Respondent shall file their respective skeleton arguments and list of authorities in response, if any, by 30th January, 2024.

21.4. The Interested Party shall file a Reply, if any, by 5th February, 2024.

21.5. The Interested Party shall file a supplementary record of proceedings by 7th February, 2024.

21.6. A status conference shall be held on 8th February, 2024, at 10:00 hours.

21.7. The main matter shall be set down for hearing thereafter.

21.8. Each party to bear their own costs.



.....
M. K. CHISUNKA
CONSTITUTIONAL COURT JUDGE