

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

2023/CCZ/0024

IN THE MATTER OF: ARTICLE 1(1) OF THE CONSTITUTION CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 SUPREMACY OF THE CONSTITUTION

IN THE MATTER OF: ARTICLE 2 OF THE CONSTITUTION CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 DUTY TO DEFEND THE CONSTITUTION

IN THE MATTER OF: ARTICLE 128 OF THE CONSTITUTION CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: THE INTERPRETATION OF ARTICLE 74 (2) OF THE CONSTITUTION CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: ORDER 4 RULE (2)(2) OF THE CONSTITUTIONAL COURT RULES STATUTORY INSTRUMENT NO. 37 OF 2016, CONSTITUTIONAL COURT ACT NO. 8 OF 2016

IN THE MATTER OF: APPOINTMENT AND ELECTION OF THE LEADER OF THE OPPOSITION IN THE NATIONAL ASSEMBLY

BETWEEN:

INSTITUTE OF LAW, POLICY RESEARCH
 AND HUMAN RIGHTS LIMITED

BRIAN MUNDUBILE

AND

THE ATTORNEY GENERAL



APPLICANT

INTERESTED PARTY

RESPONDENT

Coram: Munalula -PC, Shilimi- DPC, Sitali, Mulonda, Mulenga, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe and Mulife JJC on 19th April, 2024 and 13th November, 2024

For the Applicant: *Mr. S. F. Chipompela, Mr. A. Samabi and Mr. M. Mwango of Messrs Joseph Chirwa and Company*

For the Interested Party: *Mr. P. Chulu and Mr. D. Chembo of Messrs Patrick Chulu Legal Practitioners*

For the Respondents: *Mr. M. Muchende, S.C, Solicitor General, with Mr. C.*

*Mulonda, Principal State Advocate, Ms. A. Chisanga,
Principal State Advocate, Ms. B. M. Kamuwanga, Senior
State Advocate Mr. J. Sianyabo, Director Legal, National
Assembly*

JUDGMENT

Cases referred to:

1. Steven Katuka and Law Association of Zambia v The Attorney General and Ngosa Simyakula and 63 Others CCZ Selected Judgment No. 29 of 2016
2. Milford Maambo v The People CCZ Selected Judgment No. 31 of 2017
3. Christopher Shakafuswa and Isaac Mwanza v Electoral Commission of Zambia and The Attorney General 2018/CCZ/005
4. Benjamin Mwelwa v The Attorney General 2020/CCZ/007
5. Indo Zambia Bank Limited v Mushaukwa Muhanga S.C.Z Judgment No. 26 of 2009
6. Miyanda v Handahu (1993-1994) Z.R. 44
7. Jonas Zimba v The Attorney General 2022/CCZ/007
8. Isaac Mwanza v The Attorney General 2021/CCZ/0045

Legislation referred to:

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016
The Constitutional Court Act No. 8 of 2016
The Constitutional Court Rules Statutory Instrument No. 37 of 2016
The National Assembly Standing Orders, 2021

Other works referred to:

H.C. Black, Black's Law Dictionary with Pronunciations Abridged 6th Edition, (West Publishing Company, 1991)
Oxford Advanced Learner's Dictionary, 7th edition, (Oxford Press, 2005)

[1] This Originating Summons was heard by a Bench of 11 Constitutional Court Judges on 19th April, 2024. However, consideration and delivery of the

judgment was delayed by unexpected intervening events which resulted in a judgment of the Majority.

[2] In this matter, the Institute of Law, Policy Research and Human Rights Limited (the Applicant) moved us through Originating Summons filed under Order IV Rule 2(2) of the Constitutional Court Rules Statutory Instrument No. 37 of 2016 (the Rules) on 10th November, 2023 citing the Attorney General (the Respondent) and the Speaker of the National Assembly. Subsequently, the Speaker was mis-joined from the proceedings whilst Mr. Brian Mundubile Member of Parliament for Mporokoso Constituency (the Interested Party), was joined upon his successful application.

THE APPLICANT'S CASE

[3] Through the interpretation of Article 74 (2) of the Constitution of Zambia as amended by the Constitution (Amendment) Act No. 2 of 2016 (the Constitution), the Applicant asks this Court to determine the following questions:

- 1. Whether pursuant to Article 74(2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 a Leader of the Opposition is elected or appointed by the political party with the largest number of seats in the National Assembly itself as a political party.*
- 2. Whether pursuant to Article 74(2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 it is the individual Members of Parliament (MPs) belonging to the opposition political party with the largest number of seats in the National Assembly that elect a Leader of the Opposition.*

3. *Whether pursuant to Article 74(2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 an opposition political party with the largest number of seats in the National Assembly can elect an MP from another political party or from among independent MPs as Leader of the Opposition.*

[4] In the Affidavit Verifying Facts and supporting arguments which was filed together with the Originating Summons and deposed to by Jameson Kachimwa, the Acting Executive Director of the Applicant, the account of facts was that there had been much public interest relating to the Leader of the Opposition in the National Assembly when through Parliamentary proceedings, the Speaker of the National Assembly announced Mr Robert Chabinga, Patriotic Front (PF) party Mafinga Constituency Member of Parliament as the new Leader of the Opposition in the National Assembly.

[5] Specifically, that following the election of Mr Miles Bwalya Sampa (PF) Matero Constituency Member of Parliament as President of the PF party, radical changes were made to the leadership structures which also led to a change of office bearers including the Secretary General. That through the newly appointed Secretary General of the PF party, the Speaker of the National Assembly received communication that the PF party had appointed Mr. Robert M. Chabinga, Member of Parliament for Mafinga Constituency, as the Leader of the Opposition. That the Speaker proceeded to remove the then substantive Leader of the Opposition, Mr Brian Mundubile (the

Interested Party) and replaced him with the said Mr Chabinga.

[6] That following this development, a debate ensued in the country raising serious constitutional questions as presented before this Court regarding the meaning of Article 74 (2) of the Constitution. That an interpretation was required for the good order of democracy and constitutionalism. That since the facts were in the public domain, this Court could take judicial notice of them.

[7] The Applicant asserted in its skeleton arguments, this Court's jurisdiction to interpret the said provision and address the questions that have been raised as it was its belief that the interpretation of the said provision would help settle the questions in *casu* which in turn would be a source of guidance in the future appointment or election of a Leader of the Opposition in the National Assembly.

[8] By way of concluding, the Applicant indicated that the issues raised are in public interest and required an expedient determination by this Court. It reiterated the questions before this Court for determination but added a fourth question couched in the following manner:

Whether the Speaker of the National Assembly can effect changes to the Leader of the Opposition based on a correspondence received from the PF President. (sic)

[9] In support of the claim that this Court has the jurisdiction to interpret Article 74 (2) of the Constitution and to do so using the modes of interpretation already settled by this Court in our decisions, namely, **Steven Katuka and Law Association of Zambia v The Attorney General and Ngosa Simbyakula and 63 Others¹** and **Milford Maambo v The People²**, the Applicant placed reliance on the **Oxford Advanced Learner's Dictionary** and **Black's Law Dictionary**.

[10] At the hearing, Mr. Chipompela, on behalf of the Applicant, relied on the Originating Summons, Affidavit verifying facts and skeleton arguments filed into Court. He augmented by restating the jurisdiction of this Court to interpret constitutional provisions with authority being drawn from our decision in the **Christopher Shakafuswa and Isaac Mwanza v Electoral Commission of Zambia and The Attorney General³** case.

[11] Counsel proceeded to buttress the arguments on why this Court should use the literal approach in interpreting Article 74 (2) of the Constitution by submitting that the ordinary dictionary meanings of the word 'elect' demonstrate that the Leader of the Opposition cannot be appointed by the Secretary General of a political party or even the president of a party. That it

was on such footing that the case of **Benjamin Mwelwa v The Attorney General**⁴ stipulated the importance of political parties being able to exercise internal democracy in handling their affairs. That this Court was therefore called upon to interpret Article 74 (2) of the Constitution in a manner that promotes democratic principles to help clear up the dark cloud that had loomed over the appointment of the Leader of the Opposition.

INTERESTED PARTY'S CASE

[12] The Interested Party, Mr Mundubile, filed skeleton arguments but did not file an affidavit of fact. In his skeleton arguments the Interested Party relied on the literal interpretation as the basis upon which he provided his own interpretation of Article 74 (2) of the Constitution.

[13] The Interested Party cited the **Steven Katuka**¹ case to highlight that when it comes to statutory interpretation, the literal rule should apply unless the words of the Constitution are ambiguous. That based on the decision by the Supreme Court in the case of **Indo Zambia Bank Limited v Mushaukwa Muhanga**⁵, only where the natural meaning and intention cannot be ascertained from the words used by the legislature can recourse be made to other principles of interpretation. Reliance was also placed on the **Miyanda v Handahu**⁶ case.

[14] In urging this Court to adopt the natural and ordinary meaning of the words in Article 74 (2) of the Constitution in the absence of an ambiguity, the Interested Party referred this Court to the meaning of the word 'elect' derived from **Oxford Learner's Dictionary** which means to choose somebody to do a particular job by voting for them whereas 'appoint' means to choose somebody for a job or position of responsibility. That whilst an elected person gets their position after having been voted for by the majority, an appointed person on the other hand may be chosen and given a position by a single person.

[15] It was therefore submitted in relation to the first question, that Article 74 (2) of the Constitution requires that when the Leader of the Opposition is being appointed, the Party with the largest number of seats in the National Assembly conducts an internal party election whereby they choose who is to be leader of the opposition.

[16] In addressing the second question, the Interested Party submitted that Article 74 (2) of the Constitution was clear that it is the "*opposition political party with the largest number of seats in the National Assembly*" which is required to hold elections and appoint a Leader of the Opposition and not Members of Parliament of that political party. That every registered member of that political party should cast their vote and choose who is to occupy the

position of the Leader of the Opposition.

[17] And lastly, the Interested Party's position on the last question was that the person to be appointed as Leader of the Opposition must come from the political party holding the elections.

[18] At the hearing, Counsel for the Interested Party Mr Mwango, relied entirely on the skeleton arguments and list of authorities on record and submitted that since the said arguments had addressed all the issues adequately, he would not be augmenting.

RESPONDENT'S CASE

[19] The Respondent filed an affidavit of fact in opposition to the Summons. The affidavit was sworn by Ms. Cecilia Katele-Mambwe, Deputy Clerk of the National Assembly, who deposed that it has been the practice in past appointments of the leader of the Opposition, for the opposition political party to give notice to the institution of such election.

[20] This Court's attention was drawn to a letter dated 26th September, 2016, in which the Speaker was informed by the Secretary General of the United Party for National Development (UPND) party of the appointment of Mr. Jack Mwiimbu, Member of Parliament for Monze Constituency, as the Leader of the

Opposition. That this was after a meeting was held and a resolution arrived at by the UPND party. The letter was exhibited as "CSM1".

[21] Ms. Mambwe further deposed that on 30th August, 2021, the then Secretary General of the PF party, Mr. Davies Mwila, informed the Clerk of the National Assembly that Mr. Brian Mundubile M.P. (the Interested Party herein), had been appointed as the Leader of the Opposition after a caucus meeting had been held between the Members of the Central Committee and Members of Parliament. A letter marked as "CSM2" was exhibited in that regard.

[22] Ms. Mambwe deposed that a similar communication was received on 26th October, 2023, from Mr. Morgan Ng'ona, Secretary General of the PF party informing the Speaker of the appointment of Mr. Robert Chabinga, M.P. as the Leader of the Opposition. A copy of the correspondence was thus exhibited as "CSM3".

[23] Ms. Mambwe further deposed that "CSM3" was followed by further communication from Mr. Ng'ona on 27th October, 2023 attaching documents filed at the office of the Registrar of Societies relating to the PF party marked before Court as "CSM4". She also exhibited a letter from the Chief Registrar of Societies, Mr. Jason Mwambazi, marked as "CSM5" showing the names of

the office bearers in the PF party, and identified Mr. Ng'ona as the Secretary General of the said party.

[24] Ms. Mambwe averred that on 31st October, 2023, the Clerk of the National Assembly informed the interested Party that he would be informed on the next step following the appointment of Mr. Robert Chabinga M.P. as the Leader of the Opposition. On 1st November, 2023, the Speaker of the National Assembly informed the House of the appointment of Mr. Robert Chabinga M.P. as the new Leader of the Opposition.

[25] The Respondent filed skeleton arguments in which he contended that as an established principle of law, words or provisions in the Constitution must not be read in isolation. That in order to give effect to the objective of the Constitution, it must be read as a whole. That only when the ordinary meaning of words lead to an absurd result can the purposive approach be resorted to. The case of **Steven Katuka**¹ was cited as authority in that regard.

[26] It was the Respondent's contention that the plain and ordinary meaning of Article 74 (2) of the Constitution can only be understood by reading all the relevant provisions relating to it together. This Court was therefore referred to the case of **Jonas Zimba v The Attorney General**⁷ where this Court had

again guided on the manner in which the Constitution ought to be interpreted. The Respondent went on to dissect the meaning of the provision by arguing that the National Assembly is empowered to make standing orders for regulating its procedures pursuant to Article 77 of the Constitution. That arising from this provision, Standing Order 43 of 2021 was enacted. That in responding to the first question, Article 74 (2) of the Constitution entails that it is the opposition political party with the largest number of seats of Members of Parliament that elects the Leader of the Opposition as a party. That the said Leader of the Opposition need not come from the party with the largest number of Members of Parliament but can be elected from any opposition political party.

[27] The Respondent contended that this interpretation is based on the natural and ordinary meaning of the words in Article 74 (2) of the Constitution, which it argued, did not give rise to an absurdity. That this is further compounded by the meaning of "Opposition" in Article 266 of the Constitution.

[28] As regards the second question, the Respondent argued that answering it required a holistic analysis of Article 74 (2) of the Constitution and other provisions of the Constitution that can be used to arrive at the intention of the framers. This Court was invited to examine the distinction in the drafting

of Article 74 (1) and (2) of the Constitution with that of Article 82 (1) of the Constitution.

[29] That it was apparent that the exclusion of Members of Parliament in Article 74 (1) and (2) of the Constitution from the appointing or election criteria of the Leader of the Government Business in the National Assembly and Leader of the Opposition respectively, was intentional as opposed to being inadvertent. That this was so because Article 82 (1) of the Constitution shows that where the framers of the Constitution wanted to bestow power to elect on the Members of Parliament, they expressly did so.

[30] That Article 74 (1) and (2) of the Constitution make a clear distinction as to who appoints or elects the Leader of Government Business and the Leader of the Opposition respectively. That the latter is appointed by the President whereas the former is elected by the opposition political party with the largest number of seats in the National Assembly from amongst the Members of Parliament from the opposition.

[31] Citing the definition of "political party" in Article 266 of the Constitution, the Respondents argued that there is nothing in Article 74 (2) of the Constitution that suggests that the framers intended that the election of the Leader of the Opposition should be by Members of Parliament from the

"opposition political party" with the largest number of seats in the National Assembly. That the law simply provided that "the opposition political party" with the largest number of seats in the National Assembly elects a leader of the Opposition from amongst the Members of Parliament who are from the opposition.

[32] The Respondent went on to argue that the framers of the Constitution had wanted to give effect to Article 60 (2) (e) of the Constitution. It was therefore submitted that there was no absurdity in the manner in which Article 74 (1) and (2) of the Constitution were couched to warrant a resort to the purposive interpretation or for that matter to read into the provision so as to cure any defect or absurdity.

[33] The Respondent's submission on the third question was a reiteration of their response to the first question. With a call for a literal interpretation of Article 74 (2) of the Constitution, the Respondent added that the Leader of the Opposition can thus be a member of the largest opposition party, a member of any other political party or an independent Member of Parliament, as the case may be.

[34] At the hearing the Solicitor General, Mr. Muchende, SC, elected to give a summation of the Respondent's position. He began by drawing the Court's

attention to the fourth question that appeared on the last page of the Applicant's arguments and invited this Court to ignore it as it was outside the scope of what was in the Originating Summons.

[35] Mr. Muchende, SC, went on to submit that the word elect used in Article 74 (2) of the Constitution does not speak to the 'election' contemplated in Article 266 of the Constitution. That the word elect has connotations to do with the form of elections and the substance of electing.

[36] He argued that had it been the intention of the legislators to dwell into the manner of conducting the actual electing, they would have expressly stated so. He used the scenario in Article 82 (1) of the Constitution where Members of Parliament elect by secret ballot the Speaker of National Assembly as an example. That in comparison, Article 74 (2) of the Constitution is silent on the details of the election process. The Court was therefore urged to adopt the meaning of the word 'elect' used in the Respondent's written arguments and taken from **Black's Law Dictionary**; Adding that it is a privilege that is given to the opposition political parties without spelling how that electing process will be done.

[37] Mr Muchende, SC, further underscored that what was significant was the communication received by the Speaker of the National Assembly from

the opposition political party as to who they had settled for and it was not the Speaker's concern to inquire in to the modalities of how that name was arrived at by the internal process of each political party. Reference was made to the custom demonstrated through the exhibits attached to the Respondent's affidavit in opposition which was adopted by political parties adding that there was no hard and fast rule. The Court was urged to look at the standing orders in Malawi and South Africa for persuasion.

[38] After being prodded by the Court about the words 'appoint' and 'elect', in Article 74 (2) of the Constitution, Mr Muchende, SC, argued that two verbs were not used interchangeably. He relied on the **Final Report of the Technical Committee** at page 392 to submit that the latter word spoke of the need for the Leader of Government Business to be appointed by the President whereas the former word demonstrated that the Leader of the Opposition was left to a collection of people as opposed to the discretion of an individual.

[39] Mr Muchende, SC, gave more examples of how the process is done in other jurisdictions. He emphasized that the word 'elect' used in Article 74 (2) of the Constitution speaks to choosing or selecting, and not so much about having a polling or voting. That holding otherwise would lead to an absurdity.

REPLY

[40] In his oral submissions in Reply, Mr. Mwango denied the assertion that the Applicant sneaked in a fourth question arguing that the questions posed merely required the Court to simplify the process of ushering in the Leader of the Opposition and to offer guidance as to who should be part of the said process.

[41] Counsel further countered the argument that the Speaker merely received the communication without any role to play arguing that it was the concern of the Speaker to ensure the provisions of Article 74 (2) of the Constitution were adhered to in so far as electing the Leader of the Opposition is concerned.

CONSIDERATION AND DECISION

[42] We have perused the affidavits of fact as well as the written skeleton arguments and oral submissions by the parties. We must begin by considering the question of jurisdiction. This is so because jurisdiction is the authority or power to entertain court proceedings. In our case that jurisdiction flows from the Constitution.

[43] The Constitution, Constitutional Court Act No.8 of 2016 (the Act) and the Rules under Article 128 (1) (a) and (b), section 8 (1) and Order IV Rule 1 (1) and 2 (2) respectively, read as follows:

The Constitution

128. (1) 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*

...

The Act

8. (1) Subject to Article 28 of the Constitution, the Court in exercise of its original and final jurisdiction may determine-

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

The Rules

Order IV

1. (1) Except as otherwise provided in the Constitution, the Act and these Rules, all matters under the Act brought before the Court shall be commenced by a petition in Form I set out in the Schedule.

...

2. (2) A matter relating to the interpretation of the Constitution shall be commenced by originating summons

[44] We are alive to the fact that the Applicant averred that we have jurisdiction in this matter and that the Respondent argued that the matter is properly before us by citing our decision in **Jonas Zimba v Attorney General**⁷ to the effect that:

...this Honourable Court has the jurisdiction to hear this matter as it relates to the interpretation of Article 74 (2) of the Constitution. Further, the questions for interpretation, in our view, do not raise contentious or personalised issues. Further, the mode of commencement used is by Originating Summons therefore, this matter is properly before this Honourable Court.

[45] The Constitution and the Act give the Court jurisdiction to hear matters relating to the interpretation of the Constitution whereas Order IV Rule 2 (2) of the Rules provides the mode of commencement for a matter relating to the interpretation of the Constitution as originating summons.

[46] Whilst a party seeking interpretation of a provision of the Constitution must come to us by way of originating summons in accordance with Order IV rule 2 (2) of the Rules, the question of whether a matter is fit for sole or abstract interpretation goes beyond its mere framing or commencement under the said provision. Here is why.

[47] Abstract interpretation of our Constitutional provisions is a means to guide constitutional functionaries in the performance of their duties by providing them with authoritative interpretation of unclear provisions of the Constitution in advance or as needed before a contravention of the Constitution occurs. It is thus undertaken in the public interest, operating to prevent violation of the Constitution as opposed to resolving a violation after the fact.

[48] Other courts in this jurisdiction, can benefit from abstract interpretation when it is not employed in a manner that undermines their jurisdiction over non-Constitution related matters nor enables litigants to evade requirements for a proper trial such as those relating to *locus standi*, the burden and

standard of proof, need for a cause of action, preventing third party litigation and more.

[49] This Court's well settled jurisprudence demonstrates that only questions that solely require an interpretation of the Constitution are brought via originating summons. Where parties seek more than just an interpretation of the Constitution then the right avenue is to petition this Court or litigate the matter in the rightful court, referring only constitutional questions to this Court. In short, abstract interpretation should not short-circuit well-established and properly functioning procedures for ensuring that litigants are given their full day in the rightful court.

[50] This is more so where the factual context in issue has become a concrete controversy before the courts and therefore beyond what is envisaged in matters commenced by originating summons in this Court. Summing up our clear and consistent jurisprudence on this point we stated in the case of **Isaac Mwanza v The Attorney General**⁸ that:

In our considered view, saying that a matter is before the Court only for interpretation and nothing else is not enough. In order for this Court to be properly moved by originating summons, the issues raised must be fit for interpretation of the Constitution only.

...

4.6. *This Court's jurisdiction under Article 128 (1) (a) of the Constitution, section 8 (1)(a) of the Act and Order IV rule 2(2) of the Rules is to provide sole or exclusive interpretation of the Constitution.*

...

5.14. Our summation of the principles established by our jurisprudence and applicable to the use of the originating summons for purposes of interpreting constitutional provisions is as follows. First, the issues raised, must relate solely or exclusively to interpretation of constitutional provisions. Secondly, the questions must be of a general nature avoiding personalisation. Thirdly, they should be prospective in their effect, thereby guiding future conduct or decision making. Fourthly, they should not contain contentious matters which necessitate a proper trial in order to settle the facts and/or the law. Finally, there must be legitimate purpose for interpretation. "

[51] Accordingly, it is not enough for a party to formulate questions and move this Court under Article 128 (1) (a) of the Constitution or Order IV rule (2) (2) of the Rules. The questions they raise must be fit for this Court to engage in the process of abstract interpretation of the related provisions of the Constitution. With the foregoing in mind, we looked not just at the framing and wording of the questions in issue, but also at their context and the net effect of their determination in order to settle the competence of the interpretation sought.

[52] Before us, are three questions which arise from facts which are in the public domain and have been put on record. The parties' affidavits of fact show that on 24th October, 2023 some members of the PF party held an extraordinary general conference and conducted elections resulting in changes to the PF party's office bearers and the party's leaders in Parliament being replaced by the Speaker of the National Assembly. Specifically, it is

not disputed that acting on information provided to her, the Speaker did on 1st November, 2023 remove and replace the Leader of the Opposition (the "Interested Party" herein) who had held the office since August 2021 with a new Leader of the Opposition (a person who is not a party to these proceedings).

[53] This scenario which is the basis upon which Article 74 (2) of the Constitution is to be interpreted remains fiercely contested. The events have led to litigation both before this Court and the lower courts. The constitutionality of the Speaker's action is part of the on-going litigation. Thus, in the oral submissions before us, both the Applicant and Respondent argued on the question of whether the Speaker who had acted on the communication from the new PF party leadership was required to interrogate the validity of the communication before acting on it.

[54] The three questions for determination relate to the facts surrounding the PF party and the Leader of the Opposition in the National Assembly and essentially question the legality of the manner in which the changes referred to were done. Hence the litigation before other courts. As the facts are contested, it means that this Court cannot be moved to solely interpret Article 74 (2) of the Constitution. The interpretation sought lacks a clear settled factual basis to justify it.

[55] This in our view, as well as the fact that there are interests of a political party and of specific individuals that are at stake, mean the questions are not only contentious, but require a proper trial. It is apparent to us that the questions are personalized and not generalized as claimed. Accordingly, their interpretation will inconclusively determine issues that are contentious without the benefit to the parties concerned of having their full day in court.

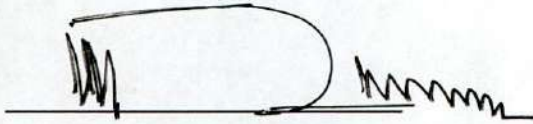
[56] The questions are equally not prospective as the facts they flow from are events which have already taken place and raise a possibility that the Constitution was breached. In other words, the questions are not prospective as the events providing the factual context were concluded before the questions were even raised before us and accordingly require more than just abstract interpretation of the Constitution to settle them. All this shows that the Originating Summons is not the right mode of commencement.

[57] It follows that we are of the firm view that this is not a suitable case for interpretation of the stated provisions. It is dismissed.

[60] Each party will bear their own costs.



M.M. Munalula (JSD)
President, Constitutional Court



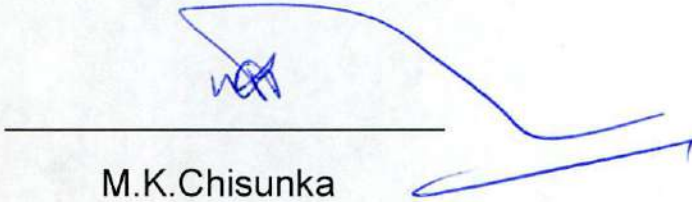
A.M. Shilimi

Deputy President, Constitutional Court



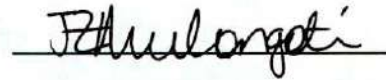
M. Musaluke

Constitutional Court Judge



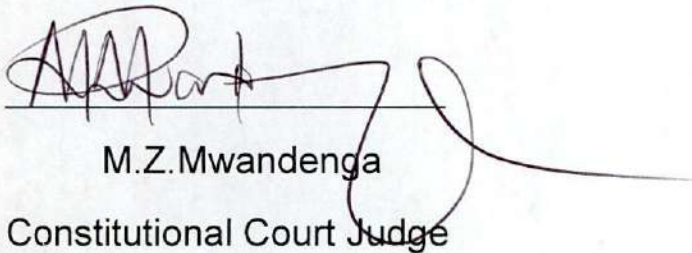
M.K. Chisunka

Constitutional Court Judge



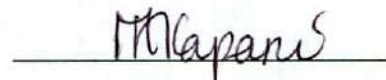
J.Z. Mulongoti

Constitutional Court Judge




M.Z. Mwandenga

Constitutional Court Judge



M.M. Kawimbe

Constitutional Court Judge



K. Mulife

Constitutional Court Judge