

**HOLDEN AT LUSAKA**

*(Constitutional Jurisdiction)*

IN THE MATTER OF: THE CONSTITUTION, CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY ACT NO. 2 OF 2016

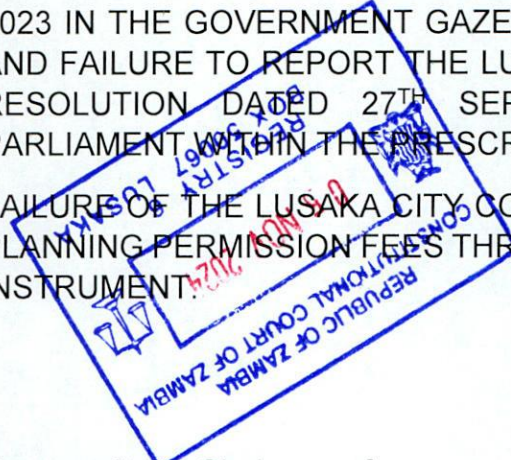
IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 67 (2) (a) OF THE CONSTITUTION

IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 199 (2) OF THE CONSTITUTION

IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 199 (3) OF THE CONSTITUTION

IN THE MATTER OF: FAILURE OF THE LUSAKA CITY COUNCIL TO PUBLISH THE COUNCIL RESOLUTION DATED 27<sup>TH</sup> SEPTEMBER, 2023 IN THE GOVERNMENT GAZETTE WITHIN 28 DAYS AND FAILURE TO REPORT THE LUSAKA CITY COUNCIL RESOLUTION DATED 27<sup>TH</sup> SEPTEMBER, 2023 TO PARLIAMENT WITHIN THE PRESCRIBED PERIOD.

IN THE MATTER OF: FAILURE OF THE LUSAKA CITY COUNCIL TO VARY THE PLANNING PERMISSION FEES THROUGH A STATUTORY INSTRUMENT.



**BETWEEN:**

**CHIPA CHIBWE** (Suing in his capacity as Chairman of the Outdoor Advertising Association of Zambia)  
**AND**

**LUSAKA CITY COUNCIL**

**PETITIONER**

**RESPONDENT**

**CORAM: MUNALULA, PC, SHILIMI, DPC, MULIFE, JC ON 30<sup>TH</sup> SEPTEMBER, 2024 AND 5<sup>TH</sup> NOVEMBER, 2024.**

FOR THE PETITIONER: Mr. P. Chulu and Mr. T. Chembo both of Messrs Patrick Chulu Legal Practitioners.



FOR THE RESPONDENT: Ms. K. Sikwibele, Director - Legal Services, Ms. A Mwanamakondo, Counsel Advocate and Mr. A. Nsama, In - House Counsel.

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## RULING

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**Mulife, JC**, delivered the Ruling of the Court.

**Cases Referred to:**

1. Mwanakanya v Zambia Consolidated Copper Mines Limited, SCZ Appeal No 98/2015.
2. Zambia National Commercial Bank Plc v Martin Musonda and 58 Others 2017/CCZ/R004/Selected Judgment No. 24/2018.
3. Mwiya Mutapwe v Shomena Dominic 2016/CC/A008.
4. Sean Tembo v Attorney General 2018/CCZ/007.
5. Benjamin Mwelwa v the Attorney General and 4 Others 2020/CCZ/007.
6. Webby Mulubisha v the Attorney General 2018/CCZ/0013.
7. Inonge Mubika v Mukelabai Pelekelo 2016/CC/A009.

**Legislation Referred to:**

Constitutional Court Rules, Statutory Instrument No. 37 of 2016.

[1] This is a Ruling on the respondent's summons for leave to file a reply and record of motion out of time (summons). The summons was filed into Court on 25<sup>th</sup> September, 2024. It was filed pursuant to Order XV, Rule 7 of the Constitutional Court Rules, 2016, Statutory Instrument No. 37 of 2016 (CCR). It was accompanied by an affidavit in support



as well as a list of authorities and skeleton arguments. It was made *ex parte* but heard *inter partes* following the Court's directive.

[2] Upon hearing the summons on 30<sup>th</sup> September, 2024, we granted the leave being sought. We further dismissed the petitioner's prayer for costs. We reserved our reasons to a later date, which we now give in this Ruling.

[3] The affidavit in support of the summons was sworn by Kabukabu Sikwibele, a Director of Legal Services in the respondent (deponent). The deponent deposed that during the hearing on 12<sup>th</sup> September, 2024, this Court made orders relating to a notice of motion for determination of questions of law that was filed by the respondent on 10<sup>th</sup> September, 2024. That among other items but most relevant to the summons, the Court ordered the respondent to file an affidavit in reply to the petitioner's affidavit in opposition, on 17<sup>th</sup> September, 2024. Further, that the respondent would file the record of motion by 19<sup>th</sup> September, 2024. To this effect, the respondent exhibited court proceedings of 12<sup>th</sup> September, 2024 marked as exhibit 'KS1' in the affidavit in support.



[4] The deponent averred that she inadvertently misunderstood the court's order to mean that the respondent was supposed to file its reply on 18<sup>th</sup> September, 2024. Consequently, the respondent's attempt to file the reply on 18<sup>th</sup> September, 2024, was declined by the registry personnel for being out of time, hence the subject summons.

[5] In its skeleton arguments, the respondent contended that Order XV, rule 7 of the CCR bestows discretion on this Court to grant the order being sought.

[6] We were also referred to the following holding of the Supreme Court of Zambia in the case of *Mwanakanya v Zambia Consolidated Copper Mines Limited*<sup>1</sup>:

The provisions in the Rules allowing extension of time are there to ensure that if circumstances prevail which make it impossible or extremely difficult for parties to take procedural steps within time, relief will be granted if the Court is satisfied that circumstances demand it.

[7] The respondent urged us to grant the order of extension of time as prayed.

[8] Though opposed to the summons, the petitioner neither filed an affidavit in opposition nor skeleton arguments. However, its counsel,



Mr. P. Chulu, made oral submissions which we shall recite in due course.

- [9] At the hearing of the summons on 30<sup>th</sup> September, 2024, Ms. Sikwibele, counsel for the respondent essentially recited the affidavit in support of the summons and skeleton arguments. For avoidance of repetition, we will not recite the same.
- [10] In opposing the summons, Mr. Chulu submitted that the Respondent did not advance convincing reasons on which this Court can exercise its discretion to extend time. Counsel cited the case of *Zambia National Commercial Bank Plc v Martin Musonda*<sup>2</sup>, to posit that litigants must comply with rules of this court.
- [11] Further, that this was not the first time the respondent was making an application at a late hour, thereby leading to adjournments. Counsel prayed for the dismissal of the summons with costs.
- [12] In reply, Ms. Sikwibele submitted that the respondent had advanced good reasons in support of the summons. Further, that the Respondent did not have prior sight of the court proceedings and as such it verily believed that it was supposed to file the reply on 18<sup>th</sup> September, 2024. She also explained that the respondent delayed in filing the subject



summons because she was out of jurisdiction. Further, her team that remained in office faced logistical challenges and load shedding.

[13] We have considered the summons and parties' rival arguments. To begin with, Order XV, rule 7 of the CCR bestows us with discretion to extend time within which an action is required to be done, provided that such time is not fixed by the Constitution. It provides as follows:

The Court may extend time limited by these rules, or by a decision of the Court, except where time is specifically limited by the Constitution.

[14] This, we affirmed in the case of *Mwiya Mutapwe v Shomena Dominic*<sup>3</sup>.

[15] In the cases of *Sean Tembo v Attorney General*<sup>4</sup> and *Benjamin Mwelwa v the Attorney General and 4 Others*<sup>5</sup>, we guided that discretionary power must be exercised judiciously and for good and convincing reasons.

[16] In the case of *Benjamin Mwelwa v the Attorney General and 4 Others*<sup>5</sup>, we further held that in judiciously exercising discretion, the court must consider the overriding principle that justice must be done. Further, that the court should consider the reasons for a party's failure to comply with the rules.



[17] In the cases of *Mwiya Mutapwe v Shomena Dominic*<sup>3</sup> and *Webby Mulubisha v the Attorney General*<sup>6</sup>, we stated that two principles should guide the court's discretion as to whether or not to grant an extension of time. First, that the application should have been made promptly. And second, whether the extension of time will prejudice the Respondent.

[18] In the case of *Inonge Mubika v Pelekelo Mukelabai*<sup>7</sup>, we further guided that all the circumstances of the case must be considered in deciding whether to extend time.

[19] In the subject summons, the reason advanced for the respondent's failure to comply with the date ordered by the Court for the filing of its reply, is that the respondent inadvertently misunderstood the date to be 18<sup>th</sup> September, 2024 as opposed to 17<sup>th</sup> September, 2024. That the inadvertence was compounded by an absence of the record of court proceedings.

[20] We find these reasons judicious and probable especially considering that the court order was pronounced orally. Additional credence is evident in the respondent's attempts to file the reply on the 18<sup>th</sup> of September, 2024, which is the date it inadvertently believed it was



supposed to do so. Accordingly, we are inclined to give the respondent a benefit of doubt in mixing-up the dates.

[21] Further we have neither found inordinate delay in filing the summons nor any demonstrable prejudice that the petitioner would suffer if the leave being sought is granted. On the contrary, we are of the firm view that justice would be served by granting the leave.

[22] We accordingly grant the leave and further affirm our prior order made on 30<sup>th</sup> September, 2024, that the respondent should file its reply and record of Motion by 1<sup>st</sup> October, 2024.

[23] Based on the foregoing findings, it is our considered view that this is not a proper case for which we should exercise our discretion to make an order of costs. We accordingly affirm our earlier position to dismiss the petitioner's prayer for costs.



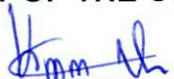
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**M.M MUNALULA (JSD)**  
**PRESIDENT OF THE CONSTITUTIONAL COURT**



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**A.M SHILIMI**  
**DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT**



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**K. MULIFE**  
**CONSTITUTIONAL COURT JUDGE**