

IN THE CONSTITUTIONAL COURT OF ZAMBIA
IN THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA
(CONSTITUTIONAL COURT JURISDICTION)

2024/CCZ/0024

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT,
NO.2 of 2016

AND

IN THE MATTER OF: ORDER IV RULE OF THE CONSTITUTIONAL COURT RULES

AND

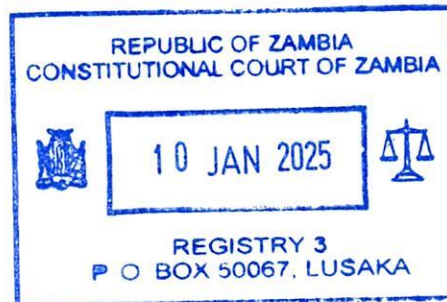
IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLE 210 OF THE
CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF
2016

AND

IN THE MATTER OF: THE TRANSACTION INVOLVING MOPANI COPPER MINES
(MCM) AND INTERNATIONAL RESOURCES HOLDINGS
(IRH)

BETWEEN:

MILES BWALYA SAMPA



PETITIONER

And

ATTORNEY GENERAL

RESPONDENT

For the Petitioner:

Ms. J.L Sipalo from Messrs. Moshia and Company

For the Respondent:

Mr. C Mulonda Acting Deputy Chief State Advocate with
Ms R. Mulolani , State Advocate both from the Attorney
General's Chambers.

RULING

Mwandenga JC delivered the ruling of the Court.

Statutes referred to:

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

1.0 Introduction and background

- 1.1 The Petitioner, Miles Bwalya Sampa commenced this Petition on the 16th December, 2024 against the Respondent, the Attorney General. On the 19th December, 2024 a scheduling conference was held and a three Judge panel made an Order for Directions. In the most material respects the Respondent was required to file his Answer and opposing affidavit on or before the 2nd January, 2025.
- 1.2 On the 2nd January, 2025 the Respondent instead of filing the Answer and opposing affidavit elected to file summons for an order to extend time within which to file an answer and an opposing affidavit (the application) pursuant to Order XV Rule 7 of the Constitutional Court Rules, 2016 (the CCR). The summons was supported by an affidavit in support sworn by one Comfort Mulenga, the Acting Chief State Advocate in the Attorney General's Chambers. The Respondent also filed authorities and skeleton arguments (the skeleton arguments) .
- 1.3 This is a ruling on the application.

2.0 Hearing of the application

- 2.1 At the hearing Mr. Mulonda on behalf of the Respondent made the application and relied entirely on the summons, the affidavit in support thereof as well as the skeleton arguments.
- 2.2 Ms. Sipalo appearing on behalf of the Petitioner did not oppose the application.

3.0 Determination of the application

- 3.1 Upon reading the summons and the affidavit in support and there being no objection to application it is hereby ordered that leave to extend time within which to file the answer and opposing affidavit **BE** and is **HEREBY** granted.
- 3.2 As this application has derailed the Order for directions that was made on the 19th December, 2024 I shall using the Court's inherent jurisdiction vary the Order for directions as follows:
- (a) The Respondent shall file his answer to the petition and affidavit opposing the petition on or before 17th January, 2025;
 - (b) The Petitioner shall file his reply to the Respondent's answer and opposing affidavit on or before 24th January, 2025;
 - (c) If the parties intend to call witnesses, they shall file witness statements on or before 31st January, 2025;
 - (d) Parties shall file and exchange their bundle of documents on or before 7th February, 2025;
 - (e) Parties shall file and exchange their list of authorities and skeleton arguments on or before 14th February, 2025;
 - (f) The Petitioner shall file the record of proceedings on or before 21st February, 2025;
 - (g) There shall be a status conference on 24th February, 2025 at 9:00hours;
 - (h) There shall be liberty to apply from the 10th January, 2025 to 24th February, 2025; and
 - (i) Costs be in the cause.
- 3.3 Despite the fact that I have granted the Respondent's application I should make it clear that I have done so because the Petitioner did not object to the application but also because I am of the view that it is necessary that the Respondent, should in the interest of justice be accorded an opportunity to file his answer and opposing affidavit.

- 3.4 However, I must express my utter disappointment at the reason that the Respondent has proffered for his failure to adhere to the Order of directions.
- 3.5 The deponent of the affidavit in support of the application deposes materially as follows:
5. That the Respondent is unable to file its Answer and Opposing Affidavit as directed owing to the fact that the deponent of the Affidavit is on national duties out of Lusaka.
 6. That the Respondent will be in a position to file its Answer and Opposing Affidavit on the 6th January, 2025...
- 3.6 As drafted paragraph 5 lacks materials particular about the intended deponent. There is no hint as to who the intended deponent is, where the intended deponent works, when the intended deponent left Lusaka, how long the intended deponent will be out of Lusaka and/or where the intended deponent went to. If indeed paragraph 5 is a statement of fact as required by Order VI Rule 13 of the CCR the deponent of the affidavit in support of the application ought, in the least, to have included the said missing information to make it believable. Simply put paragraph 5 of the affidavit in support is not believable.
- 3.7 Paragraph 6 of the affidavit in support of the application is equally not believable. Paragraph 6 makes the point that the Respondent would be ready to file the Answer and opposing affidavit by the 6th January, 2025. Paragraphs 5 and 6 were, in my view drafted for the purpose of creating an impression that the Answer and opposing affidavit were already prepared and were only awaiting the signature of the opposing affidavit by the intended deponent who was out of Lusaka and yet the purported Answer and opposing affidavit are not exhibited in the affidavit in support of the application. In the least, the purported answer and opposing affidavit ought to have been exhibited in the affidavit in support of the application to make paragraph 6 thereof believable.

- 3.6 With the foregoing matters in mind, it is clear to me that the Respondent has adopted a laissez-faire attitude to this matter simply (if conjecture is anything to go by) because the Order for directions made on the 19th December, 2024 had provided for "*liberty to apply*".
- 3.7 In my view this kind of attitude has the potential to delay proceedings before the Court and in the process the Court will not be in the position to adhere to the principle that "*justice shall not be delayed*" in keeping with Article 118(2)(b) of the Constitution. In this regard therefore, particularly the Respondent and indeed the other party to these proceedings are forewarned that the Court will not condone any laissez-faire attitude to this matter in the future.

Dated the 10th January, 2025


M.Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE