

**IN THE CONSTITUTIONAL COURT FOR ZAMBIA**  
**AT THE CONSTITUTIONAL REGISTRY**  
**HOLDEN AT LUSAKA**

**2024/CCZ/0012**

*(Civil Jurisdiction)*

IN THE MATTER OF: ARTICLE 1(1) 1(2) AND 1(3) OF THE  
CONSTITUTION OF ZAMBIA ACT NO. 2. OF  
2016

IN THE MATTER OF: ARTICLE 160, 118(1) AND 118 (2)(A) AND  
(B) OF THE CONSTITUTION OF ZAMBIA  
ACT NO. 2 OF 2016

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE  
118 (2) (A) AND (B) OF THE  
CONSTITUTION OF ZAMBIA ACT NO. 2 OF  
2016 BY SECTION 21 (4) OF THE STATE  
PROCEEDINGS ACT CHAPTER 71 OF THE  
LAWS OF ZAMBIA.

BETWEEN:

PETRUSHIKA TRADING LIMITED PETITIONER

AND

THE ATTORNEY GENERAL RESPONDENT



CORAM: Chisunka, Mulongoti and Mwandenga, JJC on 7<sup>th</sup>  
November and 6<sup>th</sup> March, 2025.

For the Petitioner: Mr. L. Zulu and Ms P. Makala of  
Equitas Legal Practitioners

For the Respondent: Ms B. M. Kamuwanga, Senior State Advocate,  
and Ms M. N. Mbao Senior State Advocate, of  
Attorney General's Chambers

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**J U D G M E N T**

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Mulongoti JC, delivered the Judgment of the Court

Cases referred to:

1. Nyathi v. MEC for the Department of Health Gauteng 2008 5 SA 94 (CC).
2. Zambia National Commercial Bank v. Martin Musonda and 58 Others CCZ Selected Judgment No. 24 of 2018;
3. Dipak Patel v. Minister of Finance 2020/CCZ/005.
4. Re: Overseas Aviation Engineering (G.B) Ltd. [1969] 3 ALL ER 12
5. Costelow v. Somerset County Council [1993] 1 All E.R. 952
6. Henry Kapoko v. The People CCZ Selected Judgment No. 43 of 2016
7. Benjamin Mwelwa v Attorney General and Others 2020/CCZ/0017
8. Attorney General v Jayesh Shah Appeal No. 15 of 2001
9. Jayesh Shah v Shaleetha Mahabeer and the Attorney General 2021/CCZ/0017

Legislation referred to:

1. The Constitution of Zambia, Chapter 1 of the Laws of Zambia
2. The State Proceedings Act Chapter 71 of the Laws of Zambia

**Introduction:**

[1] The petitioner, Petrushika Trading Limited, filed a Petition in this Court seeking the following relief:

- i. A declaration that the provisions of section 21(4) of the State Proceedings Act , Chapter 71 of the Laws of Zambia by effectively denying a successful Judgment Creditor against the State, in the position of the Applicant, from using the executionary power of the judiciary to assure compliance with Court orders without delay, is unjust and contravenes Article 118(2)(b) of the Constitution of Zambia Act No. 2 of 2016 which empowers the judiciary to ensure that justice is not delayed in all matters brought before it.
- ii. A declaration that the provisions of section 21(4) of the State Proceedings Act Chapter 71 of the Laws of Zambia, by delaying and denying a judgment creditor against the State the use of judicial power of execution in perpetuity, contravenes the Constitutional standard for delaying an execution placed at one year in respect of

**Local Authorities in Article 160 of the Constitution of Zambia Act No. 2 of 2016.**

- iii. **An Order striking out the provisions of section 21(4) of the State Proceedings Act for being unconstitutional in accordance with Article 1(1), (2) and (3) of the Constitution of Zambia Act No. 2 of 2016.**

### **Background facts**

- [2] The background facts as stated in the Petition are that the petitioner commenced legal proceedings against the respondent in the High Court for the recovery of K2,800,000.00. A default judgment was entered in favour of the petitioner dated 2<sup>nd</sup> May, 2024 by which the respondent was ordered to pay K2,800,000.00 with interest. The petitioner alleges that the respondent has refused, neglected and/or ignored to abide by the Court order to pay the amount owed. It is alleged that the petitioner is unable to levy execution against the State because of section 21(4) of the State Proceedings Act (the Act) which prohibits any successful judgment creditor from using the judicial machinery to secure compliance.

### **Petitioner's case:**

- [3] As a result of the failure by the respondent to pay the amount owed of K2,800,000.00, the petitioner commenced these proceedings in this Court via a Petition accompanied by an affidavit verifying facts sworn by Steve Nkando a Malawian national, and director in the

company Petrushika Trading Limited, which essentially repeats what is stated in the Petition.

- [4] The petitioner alleges that the provisions of section 21(4) of the Act, delay the course of justice by prohibiting a successful judgment creditor from using the Judicial state machinery available to successful litigants to enforce and execute a Judgment against the State in perpetuity thus contravening the provisions of Article 118 2(b) of the Constitution which require that the Judiciary must ensure that justice is not delayed for all matters brought before it.
- [5] According to the petitioner, section 21(4) of the Act is also against the constitutional standard of delay of a Court Judgment by a judgment creditor which is placed at one year in Article 160 of the Constitution, albeit in respect of local authorities.
- [6] The petitioner further contends that section 23 of the Act is unfair as it allows the State as a successful litigant to have recourse to the Judicial machinery for securing compliance of Court orders and is thereby able to enjoy the fruits of judgment in its favour against citizens and subjects.
- [7] The petitioner also filed a witness statement by Mr. Steve Nkando which reiterates his affidavit evidence.

## **Petitioner's Skeleton Arguments**

- [8] In support of the Petition, the petitioner filed skeleton arguments in which it asserts that the Petition is anchored on Article 1 of the Constitution; by which the Constitution is the supreme law. By sub-article 2, every individual, organisations, including state organisations and institutions are bound by the Constitution.
- [9] The petitioner argues that section 21(4) of the Act is unconstitutional in the sense that it prohibits a successful litigant from using judicial machinery to secure compliance timely, by levying execution against the State.
- [10] In respect of Article 118(2)(b) of the Constitution, the contravention comes about as it provides for justice not to be delayed but section 21(4) of the Act denies and delays in perpetuity a successful litigant from enjoying the fruits of the judgment. It is contended that section 21(4) of the Act, being subservient to the Constitution, should not delay justice as provided by Article 118(2)(b) of the Constitution.
- [11] Article 160 of the Constitution gives provision for a judgment creditor to enforce the judgment against a local authority after one year from date of judgment but section 21(4) of the Act allows the State to deny and delay in perpetuity a successful litigant justice to enjoy the fruits of judgment and goes against the constitutional standard for delaying as provided in Article 160 of the Constitution.

[12] The petitioner also posited that Article 8 of the Constitution provides for national values and principles, specifically constitutionalism, equity, social justice, equality and non-discrimination, yet section 23 of the Act allows the State to use judicial machinery to secure compliance against citizens and subjects thus rendering section 21(4) of the Constitution discriminatory and unconstitutional. In support of the supremacy of the Constitution, the following cases were cited: **Zambia National Commercial Bank v. Martin Musonda and 58 Others<sup>(2)</sup>**; and **Dipak Patel v. Minister of Finance<sup>(3)</sup>**, in which this Court elucidated that the Constitution is the supreme law of this country and ranks above all other laws. And that any law which is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency.

[13] The case of **Re: Overseas Aviation Engineering (G.B) Ltd<sup>(4)</sup>** where Lord Denning stated that a decree must be executed or enforced so as to give effect to the judgment of the Court, and it is completed when the judgment creditor gets the money or other thing awarded to him by the judgment. Its incomplete justice to make a finding in favour of the judgment creditor but deny him or her the right to complete the justice in a timely manner by having recourse to the executionary machinery of the judiciary, merely because the unsuccessful party is the State, was relied on to support the argument that court orders must be complied with by all.

- [14] The petitioner also referred to the Indian Code of Civil Procedure, 1908, specifically section 83(2)(1) and (2) which provides for a grace period of 3 months before an order can be executed.
- [15] Reference was also made to the decision by the South African Constitutional Court in **Nyathi v. MEC for the Department of Health Gauteng<sup>(1)</sup>** in which the Court denounced section 3 of the State Liability Act No. 20 of 1957 which was similar to section 21(4) of the Act. That Court noted that **in a constitutional State, access to courts entails a duty not only on the courts to ensure access but on the State to bring about enforceability of court orders.**
- [16] Mr. Zulu who appeared on behalf of the petitioner emphasized that this decision resulted in the amendment of the State Liability Act in 2011 by substitution of section 3 and providing practical guidance on enforcement of judgments against the State, which guide that an order of the Court against the state must be satisfied within 30 days of issuance. He urged this Court to take special interest in the South African case cited above which shows that a State can be executed against subject to certain safeguards.

### **Respondent's case**

- [17] In response to the Petition, the respondent filed an Answer which is supported by an affidavit in opposition sworn by Collins Chepeshi in his capacity as Ordinance Director in the Ministry of Defence. The

respondent denies the assertion that it has refused, and or ignored to pay the petitioner. It averred that the petitioner was informed that when the Zambia Army receives funding from the Ministry of Defence, the petitioner will be paid its dues.

[18] The respondent denied the contents of paragraph 10 of the Petition and averred that the petitioner has wrongly interpreted section 21(4) of the Act. That the said section should be interpreted with no misleading insinuation as has been done by the petitioner. As the intention of Parliament when enacting the said provision was to the effect that State operations should not be halted by executions of judgment creditors.

[19] In addition, that the respondent is aware that section 21(4) of the Act does not absolve the State from its obligations to pay the sum owed to the petitioner. Rather, the Army has to wait for funding from Ministry of Finance. The respondent further states that Article 118 (2)(b) of the Constitution provides for Judicial principles as to how the courts should handle matters brought before it and are procedural in nature as the judiciary is mandated to do justice unfettered by legalistic niceties.

[20] That the provisions of section 21(4) of the Act do not go against the constitutional standard for delaying an execution of a Court Judgment as the Constitution is the enabling legislation for



budgeting and planning legislation as well as the regulation of public funds, therefore section 21(4) of the Act amplifies the intention of the Constitution and does not contravene Article 118 (2) (b) thereof.

[21] That this Court cannot order striking out of section 21(4) of the Act as such an order would defeat the Constitutional intention of the planning and budgeting of public funds.

[22] The respondent further averred that the fact that the Act does not state when a successful litigant would enjoy the fruits of the Judgment does not mean that justice is delayed as there are certain procedures that need to be followed as the State is liquidating successful claims and that the prohibition of executing on the State is not a mockery to the Judicial awards as once the Judiciary performs its functions, the Executive has to follow procedure and release the funds when available.

[23] Furthermore, that various legislation has been enacted by Parliament aimed at maintaining order in the country and the Act is one such enactment.

[24] Thus this is not a proper case for this Court to grant the reliefs sought by the petitioner in the Petition as a declaration that the section of the Act which is subject of this matter contravenes the Constitution is not tenable as that would cause chaos and frustrate State operations.

[25] The respondent also filed a witness statement by the deponent of the affidavit in opposition which essentially repeats the contents of the affidavit.

**The Respondent's Skeleton Arguments:**

[26] The respondent filed opposing skeleton arguments. While admitting its indebtedness to the petitioner in the sum of K2,800,000, the respondent argues that Article 118 of the Constitution is just guidance for the courts on how matters should be handled. The English case of **Costelow v. Somerset County Council**<sup>(5)</sup> where the court stated that rules of court are there for the expeditious dispatch of litigation was cited in support of the argument. Also relied upon is our decision in the case of **Henry Kapoko v. The People**<sup>(6)</sup> where this Court stated that Article 118 of the Constitution was there to avoid manifest injustice by paying undue regard to technicalities. Thus Article 118(2)(b) of the Constitution was not contravened as there was no unreasonable delay in the High Court.

[27] The respondent urged us to interpret the Constitution as a whole. That we must consider the value and purpose of section 21(4) of the Act, and any other provisions that touch on the issue of execution of State institutions such as Article 210 of the Constitution which provides for a systemic procurement of goods which is fair,

equitable, transparent, competitive and cost-effective. And Article 204(a) of the Constitution, which provides for the prescription of financial management and regulation. That pursuant to Article 204(a) of the Constitution the Public Finance Management Act No. 1 of 2018 was enacted and under section 20 of that Act, guiding principles of public finance are given.

- [28] On the basis of section 20 of the Public Finance Management Act, the respondent submitted that successful litigants have to wait for funding in order for the concerned State institution to comply with the court order. That section 21(4) of the Act promotes the guiding principles of public finance in that it ensures that the budgeting and planning of public funds is not frustrated.

### **Petitioner's Reply**

- [29] In the affidavit in reply sworn by Steven Nkando, the petitioner averred that the Zambia Army, just like other government institutions, receives funding every year and the respondent's assertion that the petitioner has not been paid its dues due to paucity in funding, is an afterthought.
- [30] That a 2-year delay in paying the petitioner what is due to it is a great injustice.

## **The Hearing**

- [31] At the hearing of the Petition, Mr. Zulu informed the Court that the petitioner was dispensing with the witness and would rely on the Petition, affidavits in support and reply plus the skeleton arguments.
- [32] In augmenting, Mr. Zulu orally submitted that the Petition had fundamental consequences on the rule of law anchored on the constitutionality of section 21 (4) of the Act.
- [33] According to counsel, section 21(4) of the Act which stops a judgment creditor from enforcing and executing a judgment against the State is unconstitutional. That section 21(4) of the Act essentially elevates the State to be above the law and not subject to powers of the courts of law established by the Constitution. Yet, a perusal of the Constitution reveals that there is no provision which entitles the State to be above the orders of the courts.
- [34] Counsel amplified that Article 1(3) of the Constitution is express that the Constitution binds all persons, State organs and institutions. That Article 118 (2) (b) of the Constitution reposes in the courts of law the duty to ensure justice is not delayed and that section 21(4) of the Act does not give the State latitude to ignore court judgments. Further that Article 160 of the Constitution is the only one providing for execution of delayed judgments against local authorities.

[35] Additionally, that any subsidiary legislation like section 21(4) of the Act which grants the State unfettered discretion to ignore court orders in perpetuity is unconstitutional.

[36] Mr Zulu reiterated that the Constitutional Court of South Africa in **Nyathi v MEC for the Department of Health, Gauteng and Another<sup>(1)</sup>** found section 3 of the State Liability Act to be unconstitutional. The said section 3 provided as follows:

**No execution, attachment or like process shall be issued against the defendant or respondent in any such action or proceedings or against any property of the state but the amount, if any; which may be required to satisfy only Judgment or order given or made against the nominal defendant or respondent, in any such action or proceedings may be paid out of the National Revenue Fund or a provisional revenue Fund as the case may be.**

That Court opined thus:

**This reliance on the moral obligation of the State to pay its debit is no longer acceptable, as it has proven to be unproductive and has revealed the State's inability or refusal to abide by its own moral standards. Hence, it needs legislative measures that will provide an effective way in which judgment orders may be satisfied, and mechanisms that will inform the litigants in detail on the procedures that they will need to follow regarding payment of court orders against the State. It has become necessary for this court to oversee the process of compliance with court orders and to ensure ultimately that compliance is both lasting and effective.**

**In more recent years, and in particular the period from 2002 onwards, courts have been inundated with situations where court orders have been flouted by State functionaries, who on being handed such court orders, have given very flimsy excuses which**

in the end only point to their dilatoriness. The Public officials seem not to understand the integral role that they play in our constitutional state, as the right of access to courts entails a duty not only on the courts to ensure access but on the state to bring about enforceability of court orders.

In my view, there can be no greater carelessness, dilatoriness or negligence than to ignore a court order sounding in money, even more so when the matter emanates from a destitute person who has no means of pursuing his or her claim in a court of law. But we now have some officials who have become a law unto themselves and openly violate people's rights in a manner that shows disdain for the law, in the belief that as State officials they cannot be held responsible for their actions or inaction. Courts have had to spend too much time in trying to ensure that court orders are enforceable against the State precisely because a straightforward procedure is not avoidable.

The practical effect of section 3 is that the State cannot be forced to honour court orders as there is no manner in which compliance can be enforced. In the result, the ordinary citizen has no effective remedy available in a situation where the state and its officials fail to comply with a court order.

[37] Mr. Zulu pressed that following **Nyathi**<sup>(1)</sup> decision, section 3 of the South Africa Liability Amendment Act was amended. It currently provides as follows:

The following section is hereby substituted for section 3 of the Principal Act:

Subject to subsections (4) to (8), no execution attachment or like process [shall] for the satisfaction of a final court order sounding in money may be issued against the defendant or respondent in any [such] action or legal proceedings against the State or against

any property of the State, but the amount, if any, which may be required to satisfy any judgment or final court order given or made against the nominal defendant or respondent in any such action or proceedings (may) must be paid (out of the National Revenue Fund or Provincial Revenue Fund, as the case may be) as contemplated in this section.

(2) The State Attorney or attorney of record appearing on behalf of the department concerned, as the case may be, must, within seven days after a court order sounding in money against a department becomes final, in writing, inform the executive authority and accounting officer of that department and the relevant treasury of the final court order.

(3) (a) A final Court order against a department for the payment of money must be satisfied-

(i) within 30 days of the date of the order becoming final; or

(ii) within the time period agreed upon by the judgment creditor and the accounting officer of the department concerned.

(b) (i) The accounting officer of the department concerned must make payment in terms of such order within the time period specified in paragraph (a)(i) or (ii).

(ii) such payment must be charged against the appropriated budget of the department concerned.

(4) if a final court order against a department for the payment of money is not satisfied within 30 days of the date of the order becoming final as provided for in subsection (3)(a)(i) or the time period agreed upon as provided for in subsection (3)(a)(ii), the judgment creditor may serve the court order in terms of the applicable Rules of Court on the executive authority and accounting officer of the department concerned, the State Attorney or attorney of record appearing on behalf of the department concerned, and the relevant treasury.

(5) The relevant treasury must, within 14 days of service of the final court order as provided for in subsection (4), ensure that-

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned.

(6) If the relevant treasury fails to ensure that-

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned, within the time period specified in subsection (5), the registrar or clerk of the court concerned, as the case may be, must upon the written request of the judgment creditor or his or her legal representative, issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against movable property owned by the State and used by the department concerned.

[38] Accordingly it was submitted that in South Africa it is now possible to levy execution or attachment against the State. Equally, that India as far back as 1908, provided for execution against the State.

[39] Mr. Zulu contended that it would be enhancing impunity by the State if section 21(4) remains intact. That at least the State should be compelled to pay within a given period unlike open ended as it is.

[40] Ms Kamuwanga, who appeared for the respondent also dispensed with the witness and relied on the Answer, affidavit in opposition and the respondent's skeleton arguments.

[41] She reiterated the respondent's skeleton arguments and stated that the respondent is waiting for funds to be made available to pay the petitioner.



## Determination

[42] We have considered the Petition, Answer, respective affidavit evidence and the competing arguments by counsel both written and oral. The facts leading to this Petition are not in dispute as outlined in paragraph 2 of this judgment.

[43] The issue that arises for determination is whether section 21(4) of the Act contravenes Articles 118 (2) (b), 160, 1(1) and (2) and (3) of the Constitution, for prohibiting execution or attachment to ensure compliance with a judgment order against the State (respondent herein). The impugned section 21(4) provides that:

**Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the State or any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the State, or any public officer as such, of any such money or costs.**

[44] Before we delve into consideration of the issue, it is vital that we highlight the provisions of the Constitution which are alleged to have been contravened by section 21(4) of the Act. Article 1 (1), (2) and (3) of the Constitution provide for the supremacy of the Constitution and that the Constitution binds all persons in Zambia, State organs and institutions. Article 118 (1) and (2) (a) and (b) provide *inter alia*:

118. (1) The judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability.

(2) In exercising judicial authority, the courts shall be guided by the following principles:

(a) justice shall be done to all, without discrimination;

(b) justice shall not be delayed;

Article 160 provides that:

160. A person who obtains a judgment against a local authority may enforce the judgment against the local authority after one year from the date of the delivery of the judgment.

[45] The question is does section 21(4) of the Act contravene the above articles? To put matters in proper context, we find it imperative to state the purpose or object of the Act. It is stated as follows in the Preamble of the Act: "An Act to provide for civil proceedings by and against the State and the civil liabilities and rights of the State and its servants; and for purposes connected with the aforesaid matters".

[46] Furthermore, it is critical for the Court to consider the whole of section 21 of the Act and other relevant sections of the Act to determine whether it contravenes the Constitution as alleged by the petitioner.

Section 21 is couched thus:

(1) Where in any civil proceedings by or against the State, or in any proceedings in connection with any arbitration to which the State is a party, any order (including an order for costs) is made by any court in favour of any person against the State or against a public officer as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person

by any court in favour of any person against the State or against a public officer as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) If the order provides for the payment or any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Permanent Secretary, Ministry of Finance, shall, subject as hereinafter provided, pay to the person entitled or to the legal practitioner acting for such person in the proceedings to which the order relates the amount appearing by the certificate to be due to him together with the interest, if any, allowed under section *twenty*:

Provided that the court by which any such order as aforesaid is made, or any court to which an appeal against the order lies, may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended and, if the certificate has not been issued, may order any such directions to be inserted therein.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the State or any such money or costs as aforesaid, and no person shall be individually liable under any order for the

payment by the State, or any public officer as such, of any such money or costs.

[47] It is clear that the Act provides for civil proceedings by and against the State. This is what governs the case between the petitioner and the respondent in the High Court commercial division as the dispute arose out of a commercial transaction (i.e. *Petrushika Trading Limited v Attorney General 2023/HPC/833*). It was in that matter that final judgment by way of default was entered against the Attorney General. We are of the considered view that before we delve into whether there is a constitutional breach, it is imperative to consider the import of the whole of section 21 as outlined above in order for us to detect whether it prohibits a successful judgment creditor from using the judicial machinery to enforce or execute a judgment against the State. We say so because the Act governs how proceedings against the State should be conducted as the State is a unique party and is not like any other defendant or party to court proceedings.

[48] Against this backdrop, we note that the starting point is section 21(1), (2) and (3) of the Act which provide for satisfaction of orders against the State by requiring that a certificate be issued providing for details of the order or money due and the same shall be served

on the Permanent Secretary Ministry of Finance for payment. Subsection (4) then provides for the exemption as argued in *casu*.

[49] We note that during the hearing, Mr. Zulu, confirmed that the petitioner had not complied with section 21(1) (2) and (3) of the Act, but simply alleges that section 21(4) is unconstitutional because the respondent has not paid what is due to the petitioner since May 2024, as ordered by the High Court. We held in **Benjamin Mwelwa v Attorney General and Others**<sup>(7)</sup> that we hold the firm view that it is not sufficient to allege a breach of a statutory or constitutional provision without setting out the facts, in sufficient detail, which are the basis of the claim against the respondent and entitle the petitioner to the reliefs sought.

[50] In the case of the **Attorney General v Jayesh Shah**<sup>(8)</sup>, (wherein the essence of *Stickrose (Pty) Limited* case was explained) the Supreme Court in a matter involving section 21 of the Act, observed that:

[53] We held that Section 21 (4) recognizes that there are other methods available to satisfy judgment against the State. There are good reasons for not allowing execution against the State but the judgment creditor is not left without remedy; and this is provided for in Section 21 (1), (2) and (3). The law provides that a judgment creditor may be issued with a certificate in prescribed form containing particulars of the judgment debt to be served on the Attorney General and Permanent Secretary Ministry of Finance who shall pay the amount due. That is the mode of enforcing judgement against the State.

[51] Furthermore, that:

Execution is an act of completing or carrying into effect of a judgment by writs of execution or orders which compel the defendant to do or pay what has been adjudged. The Court is not completely ineffective in judgment involving the State as can be clearly seen in Section 30(4) of the State Proceedings Act.

[52] We are persuaded by this decision of the Supreme Court and hasten to state while writs of *fifa* may not lie against the State, there are other methods to satisfy judgments against the State. We are of the firm view that the petitioner has failed to prove that section 21(4) of the Act is unconstitutional and that the petitioner or other judgment creditors against the State have no remedy to fulfil the court Judgments or orders. We note that section 31(4) of the Act clothes the courts with power to issue order of mandamus as one way of enforcing judgment against the State.

[53] We are thus, not persuaded by Mr. Zulu's arguments including his reliance on the **Nyathi**<sup>(1)</sup> case.

[54] Additionally, upon perusal of the Constitutional articles allegedly breached by the respondent via section 21(4) of the Act, we are of the firm view that the same are in fact inapplicable on the facts of this case. Article 160 of the Constitution is dealing with local authorities which the respondent is not. Article 118 (1) and (2) (a) and (b) provide for principles of judicial authority which guide the

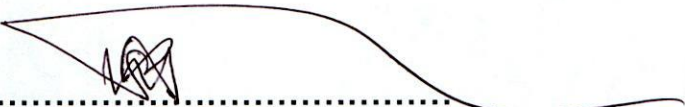
not even against the judiciary but the respondent (Zambia Army) for delayed payment.

[55] We, however, agree with Mr. Zulu's submissions on the supremacy of the Constitution and the values and principles though these are not helpful in *casu*. We opine that the petitioner has other avenues open to it to ensure fulfillment of the judgment and the same be explored in the relevant courts with competent jurisdiction.



[56] Further, as argued by the respondent other new legislation have been enacted (since the 2016 constitutional amendments) to regulate Public funds like the Public Finance Management Act. This court also noted in the case of **Jayesh Shah v Shaleetha Mahabeer and the Attorney General** <sup>(9)</sup> that under Article 209 of the Constitution a Compensation Fund has been established and that outstanding judgment debts should be promptly cleared under it and that it should be disbursed with adequate funds to do so.

[57] All in all, we find that the petitioner has failed to establish a case for the Court to declare section 21(4) of the Act unconstitutional. The Petition fails and is hereby dismissed.


[58] In the circumstances of this case, we order each party to bear own costs.



.....  
**M. K. Chisunka**  
Constitutional Court Judge



.....  
**J. Z. Mulongoti**  
Constitutional Court Judge



.....  
**M. Z. Mwandenga**  
Constitutional Court Judge

