



IN THE CONSTITUTIONAL COURT OF ZAMBIA REGISTRY 5 2025 CCZ/0010
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)
P O BOX 50067, LUSAKA

IN THE MATTER OF: ARTICLE 128 OF THE CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLES
128(2) AND 76(1) OF THE CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: SECTION 3 AND 4 OF THE NATIONAL ASSEMBLY
(POWERS AND PRIVILEGES) ACT CHAPTER 12 OF
THE LAWS OF ZAMBIA

IN THE MATTER OF: THE JURISDICTION OF THE CONSTITUTIONAL
COURT TO HEAR A MATTER THAT RELATES TO THE
CONSTITUTION

IN THE MATTER OF: THE DUTY TO REFER A QUESTION RELATING TO
THE CONSTITUTION TO THE CONSTITUTIONAL
COURT FOR DETERMINATION

IN THE MATTER OF: THE POWERS AND PRIVILEGES OF SITTING
MEMBER OF PARLIAMENT TO FREELY DEBATE
MATTERS OF PUBLIC INTEREST

IN THE MATTER OF: THE DECISION OF THE CHIEF RESIDENT
MAGISTRATE DATED 2nd APRIL 2025

BETWEEN:

MUNIR ZULU

PETITIONER

AND

THE ATTORNEY GENERAL

1st RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS

2nd RESPONDENT

DAVIS CHIBWILI (In his capacity as Presiding Magistrate)

3rd RESPONDENT

BEFORE HON. LADY JUSTICE MARIA MAPANI – KAWIMBE IN CHAMBERS ON THE
4th AND 7th APRIL, 2025.

For the Petitioner:

Mr. J. Chirwa and Mr. C. Mwenje of Messrs Joseph
Chirwa & Company

RULING

Cases referred to:

1. Bric Back Limited T/A Gamwane Ranches v Kirkpatrick 2020/CCZ/A002
2. Chishimba Kambwili v Attorney General 2019/CCZ/009
3. Bowman Lusambo v Attorney General 2023/CCZ/001

Legislation referred to:

The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by the
Constitution of Zambia (Amendment) Act No. 2 of 2016
Constitutional Court Rules Act S.I No. 37 of 2016
Rules of the Supreme Court of England (Whitebook) 1999 Edition.

Other works referred to:

Halsbury's Laws of England Vol. 37, 4th Edition Re-Issue

[1] This ruling is on the application made by Mr. Munir Zulu (the petitioner) which was filed into Court on 3rd April, 2025, wherein he alleges that the respondents contravened Articles 76(1) and (2), and 128(2) of the Constitution Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of

2016 (the Constitution). The petitioner cited the Attorney General (as 1st respondent), the Director of Public Prosecutions (as the 2nd respondent) and Hon. Davies Chibwili (as the 3rd respondent) respectively.

- [2] The application was made by *ex parte* summons where the petitioner seeks an order of this Court to stay proceedings in cause CRMPC/009/2023 pending the hearing and determination of his petition filed under Order 9 Rule 20 and Order X Rule 2 of the Constitutional Court Rules, S.I No. 37 of 2016 as read with Order 59/13/2 of the Rules of the Supreme Court of England (Whitebook) 1999 Edition.
- [3] In the main, the petitioner avers that he was prompted to file an application before the Court in order to invoke its jurisdiction under Article 128(2) of the Constitution. That this followed the 3rd respondent's refusal to stay criminal proceedings in his favour in a matter where he is appearing as the accused person. That, as a result of the 3rd respondent's unconstitutional action, he is likely to be prejudiced because critical questions requiring constitutional interpretation and determination under Article 76(1) and (2) of the Constitution which affect his personal liberty would not be timely

addressed before the 3rd respondent delivers judgment in the criminal proceedings.

- [4] The application was supported by an affidavit deposed to by the petitioner, list of authorities and skeleton arguments dated 3rd April, 2025.
- [5] The petitioner deposed that he filed a petition before this Court raising questions on the constitutionality of the criminal proceedings against him in cause CRMPC/009/2023. That this arises from his arrest and subsequent charge by the Zambia Police Service following his debate made on the floor of the National Assembly. That he enjoys parliamentary immunity and privileges and in consequence, the criminal prosecution is unconstitutional, illegal, null and void.
- [6] The petitioner avers that during the course of criminal proceedings, certain constitutional questions arose and he made an application before the 3rd respondent to refer them to this Court. That in misdirection, the 3rd respondent refused to refer the questions which clearly divulge issues on constitutionality, the administration of justice and his liberty. The petitioner avers that if the proceedings under cause CRMPC/009/2023 are not stayed pending the determination of his petition, he is likely to suffer great prejudice because the 3rd

respondent will move to render judgment against him when there are hanging constitutional issues requiring resolution.

- [7] In further support of the petitioner's application, the Court was referred to **Order 59/13/2 of the Whitebook** which provides on stays that:

The question whether or not to grant a stay is entirely in the discretion of the court (*Becker v Earl's Court Ltd* (1911) 56 S.J. 206; *The Ratata* [1897] P. 118, p, 132; *Att. Gen. v. Emerson* (1889) 24 Q.B.D. 56 at 58,59) and the court will grant it where the special circumstances of the case so require.

- [8] The petitioner thereafter submitted that the Court has the necessary jurisdiction to grant a stay of proceedings, adding that the power could only be exercised after extreme judiciousness and caution. To fortify the submission, the petitioner cited the learned authors of **Halsbury's Laws of England Vol. 37, 4th Edition Re-Issue** at paragraph 930 where they state that: –

The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

[9] The case of **Bric Back Limited T/A Gamwane Ranches v Kirkpatrick**¹ was cited on the procedure to be adopted by litigants where a court refuses to refer an alleged constitutional question to this Court as follows: –

The [Constitutional] Court's guidance is that a party that is dissatisfied with the presiding person's decision refusing to refer an alleged constitutional question to this Court ought to apply to stay the proceedings in that court and initiate a separate action for the interpretation of the issue by this Court in accordance with Order IV of the CCR.

[10] The petitioner next submitted that he followed the guidance above but the 3rd respondent refused to refer the constitutional questions to the Court, spurring the filing of the petition herein. In concluding, the petitioner prayed that the application be granted.

[11] I heard the matter on 4th April, 2025 and learned counsel on behalf of the petitioner relied on the summons, supporting affidavit, list of authorities and arguments filed herein. Counsel augmented through oral submissions that the petitioner's case raises novel issues which have never been determined in our jurisdiction on parliamentary immunity and privileges and the extent thereof.

- [12] In addition, that the petition raises jurisdictional issues concerning the Subordinate Court on two fronts. Firstly, that the court has no jurisdiction to refuse to refer a constitutional question to this Court and that where constitutional matters are concerned, no timelines as was purported to be applied by the 3rd respondent in his ruling exist under Article 128 of the Constitution.
- [13] It was contended that when the constitutional question arose, all that the 3rd respondent was required to do was to stay proceedings and not venture into constitutional interpretation as purported to. This is because under Article 128(2) of the Constitution, the power to interpret the Constitution vests solely in the Constitutional Court.
- [14] Counsel on the second jurisdictional issue concerning the lower court, contended that it lay on the question, whether it had power to try a case arising under Article 76 of the Constitution as read with the National Assembly Standing Order 202 of 2021. He then submitted that the Court in the case of **Chishimba Kambwili v Attorney General**² settled the issue when it recognised that the National Assembly is empowered under Article 76 of the Constitution to determine its own procedures. Further, that this power is embodied in the National Assembly Standing Orders and where it involves

discipline of members, the National Assembly Standing Order 202 in clause 3, sufficiently deals with transgressions committed by the members and provides for sanction.

[15] Counsel then cited sections 3 and 4 of the Parliamentary Privileges Act to illustrate the autonomy of the National Assembly in that the provisions incrementally state that no civil or criminal proceedings may be brought against a member for conduct on words uttered on the floor of the National Assembly or in its precincts. The precincts of the National Assembly being any place designated as such including the National Assembly Motel.

[16] Counsel asserted that jurisdiction means everything and where a court sits without it, nothing can come out of it. He then contended that if the unconstitutional proceedings against the petitioner were allowed to continue, he would be highly prejudiced in the event that he was convicted by the Subordinate Court and thereafter only for this Court to find that his petition has merit. According to counsel, the petitioner had shown that this is a proper case in which a stay of the criminal proceedings in his favour should be granted under Article 128(2) of the Constitution.

Determination

[[17] I have considered the petition, affidavit deposed to by the petitioner, the attendant arguments and list of authorities relied on. At the very outset and before dealing with the issues raised herein, it is important that I should determine whether this Court has jurisdiction under Article 128(2) of the Constitution to stay the criminal proceedings against the petitioner in the Subordinate Court?

[18] Article 128(2) of the Constitution which the petitioner sought to rely on as granting the Court jurisdiction to entertain his application provides that:

128(2) Subject to Article 28(2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

[19] The material before me shows that the petitioner is involved in criminal proceedings before the Subordinate Court. The petitioner seeks a stay before this Court to halt the proceedings therein, so that it can deal with the alleged constitutional questions raised in his petition dated 3rd April, 2025.

[20] The law guiding the stay of criminal proceedings in our jurisdiction can now be said to be well settled. Of relevance to the matter at hand

is the case of **Bowman Lusambo v Attorney General**³ we stated that:

The Constitutional Court has original jurisdiction in all matters alleging contravention of the Constitution and for interpretation of the Constitution. The Court has appellate jurisdiction in matters relating to appeals involving elections of Members of Parliament and councillors. Therefore, whatever interim or interlocutory order the Court issues must be in line with its jurisdiction as provided in the Constitution. Upon our further perusal of the Constitution, and with particular reference to an interim order for stay of proceedings, we are of the considered view that the Constitution provides for when a stay should be in place per Article 128(2). Thus, a stay is incorporated within the provisions of the Constitution.

[21] The Court on the import of Article 128(2) of the Constitution explained that:

What we deduce from Article 128(2) is that, a Court in this current case for instance, the Subordinate Court where the petitioner is appearing for criminal charges should have determined that a question relating to the Constitution had arisen. Thereafter, it should on its own motion, have stayed the proceedings before it and referred the question to this Court for determination.

.....

We are therefore, of the firm view that although the CCR provide for application for interlocutory or interim orders, the interim order for stay is incorporated in the Constitution such that one need not apply for a stay in this Court. In this regard, we are inclined to disagree with the Milingo ruling by the single judge for holding that Article 128(2) mandates the Constitutional Court to stay proceedings

pending determination of the petition or matter before it as it is the court before which a question regarding the Constitution arises that should stay proceedings.

[22] It follows, therefore, and contrary to the petitioner's submissions, that this Court has no jurisdiction to stay criminal proceedings in the Subordinate Court under the guise of Article 128(2) of the Constitution. The Constitution is couched in mandatory terms and does not give the Court discretion to interfere with proceedings in the Subordinate Court. As we guided in **Bowman Lusambo (*supra*)**, when a question requiring constitutional interpretation arises during proceedings, it is for the court where the person is appearing in criminal proceedings (in this instance, the 3rd respondent's court) to stay the proceedings therein, before referring the matter to this Court for resolution.

[23] I am mindful of the petitioner's deposition that he followed the procedure outlined above after the 3rd respondent refused to refer the alleged constitutional questions to this Court. He filed a petition which is before this Court and which I cannot comment on as this is not the substantive hearing.

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[25] In the premises, I find the application to be misconceived and dismiss it for want of jurisdiction. No order is made on costs.

Dated at Lusaka this 7th day of April, 2025

.....M. Mapani.....

**M. Mapani-Kawimbe
Constitutional Court Judge**