

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

2025/CCZ/008

IN THE MATTER OF: ARTICLE 128(1)(b) OF THE CONSTITUTION OF  
ZAMBIA (AMENDMENT) ACT, 2016

IN THE MATTER OF: ARTICLE 189 (2) OF THE CONSTITUTION OF  
ZAMBIA (AMENDMENT) ACNO.2 of 2016

BETWEEN:

FORD CHOMBO  
AND  
THE ATTORNEY GENERAL



PETITIONER

RESPONDENT

Coram : Munalula PC, Mulongoti and Kawamba, JJC on 4<sup>th</sup> April,  
2025 and 19<sup>th</sup> June, 2025

For the Petitioner: *Mr. G. Chombo of Messrs Chombo and Company*

For the Respondent: *Mr L. Njamba, State Advocate-Aorney General's  
Chambers*

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## RULING

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Munalula, PC, delivered the Ruling of the Court.

### Cases referred to:

1. JCN Holdings Limited v Development Bank of Zambia Appeal No. 87 of 2012
2. Owners of Motor Vessel "Lilians" v Caltex Oil (Kenya) Limited (1999) KLR
3. Martin Chilukwa v Attorney General 2022/CCZ/0030
4. Bric Back Limited T/A Gamamwe Ranch v Neil Kirkpatrick 2021/CCZ/002
5. Gervas Chansa v The Attorney General 2019/CCZ/004
6. Dominic Mulaisho v Attorney General (2012) Z.R. 551
7. Bowman Chilosha Lusambo v Bernard Kanengo, Electoral Commission of Zambia and The Attorney General 2023/CCZ/A002
8. Lloyd Chembo v Attorney General CCZ Selected Judgment No.15 of 2018
9. Institute of Law, Policy Research and Human Rights Limited and Another v Attorney General 2023/CCZ/0024
10. Autry Chanda v The Attorney General 2021/CCZ/0039
11. Lucas Haamatowe and 10 Others v Zambia Postal Services Corporation Limited 2022/CCZ/0015

Legislation referred to:



The Constitution of Zambia (Amendment) Act No. 2 of 2016  
The Constitutional Court Act No. 8 of 2016  
The Constitutional Court Rules, Statutory Instrument Number 37 of 2016  
The Limitations Act, 1939  
The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

**Work referred to:**

1. Black's Law Dictionary, 9<sup>th</sup> edition

**INTRODUCTION**

1. This Ruling is in respect of the question on jurisdiction raised by this Court. The matter was commenced by way of Petition and filed into the Constitutional Court on 28<sup>th</sup> March, 2025. The Petitioner sought the following relief:

- i. **A declaration that the Respondent's failure to promptly pay out the Petitioner's pension benefits and/or to remove the Petitioner from the payroll before the payment of pension benefits due to him is contrary to Article 189 (2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016;**
- ii. **An order for payment of the sum of ZMW2,147,239.00 being monies owed to the Petitioner by the Respondent in 149 months' salary arrears from 1<sup>st</sup> March, 2013 to the date of filing the Petition;**
- iii. **Interest;**
- iv. **An order for the Petitioner to be retained on the Respondent's payroll until such a time when the Petitioner is paid his full pension benefits by the Respondent;**
- v. **Legal costs;**
- vi. **and such other order(s) as this Honourable Court shall deem just.**

2. At the scheduling conference convened in accordance with Order 9 Rule 16 of the Constitutional Court Rules, S. I. No. 37 of 2016 (Constitutional Court Rules) on 4<sup>th</sup> April, 2025 we requested the



parties to address us on the question of jurisdiction. Both parties opted to file written submissions for which we are grateful.

### **PETITIONER'S SUBMISSIONS**

3. The Petitioner submitted that Article 128 (1)(b) of the Constitution empowers this Court to hear and determine this Petition. That the Petitioner commenced this action pursuant to Article 189 (1) and (2) of the Constitution which the Respondent allegedly violated by its failure to promptly and regularly pay the Petitioner's pension benefit when he was retired in the national interest on 1<sup>st</sup> March, 2013 as well as the subsequent failure to maintain him on the payroll.

### **RESPONDENT'S SUBMISSIONS**

4. It was the Respondent's submission that the question of jurisdiction in any matter is paramount and the same ought to be determined before the attendance to any other issue by a court. That this was in accordance with the Supreme Court's decision in the case of **JCN Holdings Limited v Development Bank of Zambia**<sup>1</sup> and the Kenyan case of **Owners of Motor Vessel "Lilians" v Caltex Oil (Kenya) Limited**<sup>2</sup> which were cited for persuasive value to buttress this point.



5. The Respondent then placed reliance on the case of **Martin Chilukwa v Attorney General**<sup>3</sup> and **Bric Back Limited T/A Gamamwe Ranch v Neil Kirkpatrick**<sup>4</sup> to argue that the Petitioner's claim revolves around an employer-employee relationship and payment of benefits which is a purely employment law related dispute. That issues in contention do not need the interpretation of any constitutional provision as the dispute is rooted in a contract or statutory obligation.
6. With the aid of the definition of a 'constitutional question' given by this Court in the case of **Gervas Chansa v The Attorney General**<sup>5</sup> and the definition of a 'legal issue' from **Black's Law Dictionary, 9<sup>th</sup> edition** at page 908, it was the Respondent's contention that the relief sought in the Petition not only fails to invoke the Court's interpretative jurisdiction over the Constitution, but the same requires this Court to determine whether or not the Petitioner is entitled to a pension on his retirement and if so, why the same has not been paid. That the questions in contention in the main matter clearly fall short of meeting the threshold set for a constitutional question.
7. The Respondent also wondered whether the law could be applied retrospectively in this matter when the Petitioner had retired in 2013 before the constitutional amendments of 2016. The Respondent



alluded to the provisions of the Limitations Act, 1939 of the United Kingdom to argue that matters which are tortious or arise from breach of contract must be commenced within 6 years of the accrual of the cause of action. To this end, the case of **Dominic Mulaisho v Attorney General**<sup>6</sup> was cited to demonstrate when time begins to run.

8. The Respondent went on to refer to Article 128 (1) and (3) of the Constitution to argue that the said provisions do not extend this Court's jurisdiction to employment matters. That the Petitioner's claims should have been commenced before the High Court which has exclusive jurisdiction over such matters pursuant to section 85 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

### **CONSIDERATION AND DECISION**

9. The issue before us is to determine whether this matter falls within the jurisdiction of this Court. In defending the action, the Petitioner argued in the affirmative alleging breach of Article 189 (1) and (2) of the Constitution by the Respondent. This position was opposed by the Respondent who contended that this matter is an employment dispute which does not raise any constitutional question or require interpretation of the Constitution.



10. We have considered the arguments. We wish to first agree with the Respondent that the jurisdiction of a court is a fundamental issue in any legal system. It sets the boundaries of authority between different courts. In the case of **Bowman Chilosha Lusambo v Bernard Kanengo, Electoral Commission of Zambia and The Attorney General**<sup>7</sup>, we stated that:

... jurisdiction is the lifeline of a Court. In other words, it is the distinctively legal power of a Court to make decisions or orders that will govern the rights and obligations of the parties.

11. Without this lifeline, decisions rendered by any court would have no legitimacy. In addition, we note that courts have limited resources and resolving the question of jurisdiction early helps allocate these resources efficiently. For specialized courts such as ours, the jurisdiction is specific. In the case of **Lloyd Chembo v Attorney General**<sup>8</sup> we stated that:

...We are also convinced that hearing this matter would not be an acceptable way of employing scarce judicial resources. More so as Article 198 of the Constitution as amended enjoins us to ensure prudent and responsible use of public resources.

12. Our jurisdiction is established in the Constitution, the Constitutional Court Act No. 8 of 2016 and rules of court. Our decisions in the case of **Institute of Law, Policy Research and**



**Human Rights Limited and Another v Attorney General<sup>9</sup>** and the **Lloyd Chembo<sup>8</sup>** case are instructive.

13. The jurisdiction of the Constitutional Court is clearly set out in Article 128 of the Constitution and section 8 of the Constitutional Court Act No. 8 of 2016 which provide that:

**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;**
- (c) a matter relating to the President, Vice-President or an election of a President;**
- (d) appeals relating to election of Members of Parliament and councillors; and**
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.**

**(2) ...**

**(3) Subject to Article 28, a person who alleges that-**

- (a) an Act of Parliament or statutory instrument;**
  - (b) an action, measure or decision taken under law; or**
  - (c) an act, omission, measure or decision by a person or an authority;**
- contravenes this Constitution, may petition the Constitutional Court for redress.**

**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;**
- (c) a petition to challenge the nomination of a candidate for election as Republican President;**
- (d) a matter relating to the Republican President, Vice President or the election of a Republican President;**
- (e) appeals relating to election of Members of Parliament and councillors;**
- (f) an application to review a decision of the Electoral Commission of Zambia in the delimitation of constituencies and wards;**



(g) a matter referred to the Court by the Republican President pursuant to the Constitution; and

(h) whether or not a matter falls within the jurisdiction of the Court.

...

14. The above provisions demonstrate that this Court's jurisdiction is limited to hearing cases involving interpretation and violation or contravention of the Constitution as enshrined in Article 128 of the Constitution and as read together with section 8 of the Constitutional Court Act. Our decision in the case of **Autry Chanda v The Attorney General**<sup>10</sup> said as much. We further stated in the **Lloyd Chembo**<sup>8</sup> case, that:

...this Court does not operate in a vacuum. There is comity between the courts constituting the Judiciary. This Court works hand in hand with other courts so that matters before it and before other courts are heard and determined in an orderly and efficient manner. The nature and status of this Court is such that it deals with direct violations of the Constitution. By virtue of Article 1(5) a matter relating to the Constitution is heard by the Constitutional Court. The rest of the law is adequately handled by other courts.

15. A quick perusal of the Petition before this Court reveals that this matter is a labour related dispute which does not need an interpretation of the provisions of the Constitution cited by the Petitioner as ample guidance on the same has been given in a number of our decisions over the years. In this regard, the issues in dispute can be best settled by the Industrial Relations Division of the



High Court. The Respondent rightly referred us to our decision in the **Bric Back**<sup>4</sup> case where we found as follows:

Our understanding of the above provisions is that they define the jurisdiction of the Industrial Relations Division of the High Court by stating matters that the Division can hear and the awards that can be awarded within its jurisdiction. To be specific, the reading of these provisions reveals that the Industrial Relations Division has exclusive jurisdiction to determine matters relating to industrial relations. Industrial relations under section 85(9) also means general inquiries into, and adjudication on, any matter affecting the rights, obligations and privileges of employees, employers and their representative bodies, among other things.

It therefore follows that the Industrial Relations Division of the High Court has jurisdiction to determine any dispute arising from an employee / employer relationship and relating to the rights, obligations and privileges of an employee and an employer.

We hold the view that the Industrial Relations Division of the High Court has been granted clearly stipulated jurisdiction and this relates to all disputes involving industrial relations. The dispute between the Applicant and the Respondent is purely a matter falling within industrial relations and it gives the Industrial Relations Division of the High Court complete jurisdiction to determine the matter. We hold the view that even though a relief sought is provided for under the Constitution, it does not in any way oust the jurisdiction of the Industrial Relations Division of the High Court unless what is sought is the interpretation of the constitutional provision referred to. The Applicant has however not brought an action for the interpretation of Article 189 of the Constitution in this matter commenced by originating summons.

...This Court has in several cases guided on who qualifies to fall under Article 189 of the Constitution and Courts have been ably guided. We therefore agree with Counsel for the Respondent's submissions that where this Court has given guidance on a matter, .... it is not necessary to raise the same issue before the Constitutional Court where there is no ambiguity in the understanding of a constitutional provision."

16. We note that the Respondent also raised the issue of retrospective application of the law though this was done in passing.



We are of the considered view that it is crucial that this Court addresses its mind to it. The facts in the Petition clearly show that the Petitioner was retired in national interest on 1<sup>st</sup> March, 2013 nearly three years before the Constitutional amendments of 2016 were enacted into law. In the case of **Lucas Haamatowe and 10 Others v Zambia Postal Services Corporation Limited**<sup>11</sup> we stated that:

It is also not in dispute that the Constitution of Zambia (Amendment) Act No. 2 of 2016 which introduced Article 189(2) only came into force on 5<sup>th</sup> January, 2016.

It is trite that the law does not operate retrospectively unless there is a specific provision providing for the retrospective effect of the law... A perusal of the Constitution and indeed a plain reading of the said Article 189(2) reveals that the clause does not provide for retrospective application.

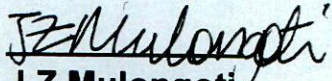
We affirm our position and enjoin the parties to take note.

17. Having found that the Petition filed on 28<sup>th</sup> March, 2025 is a labour related matter, we are of the firm view that this Court has no jurisdiction to hear the matter on the merits. It is dismissed and each party will bear their own costs.



**M M Munalula (JSD)**  
**Constitutional Court President**



  
J Z Mulongoti

Constitutional Court Judge

  
M M Kawimbe

Constitutional Court Judge