

IN THE CONSTITUTIONAL COURT  
HOLDEN AT LUSAKA  
(Constitutional Jurisdiction)



IN THE MATTER OF:

THE CONSTITUTION OF ZAMBIA  
CHAPTER 1, VOLUME 1 OF THE  
LAWS OF ZAMBIA

IN THE MATTER OF:

REMOVAL OF JUDGES FROM  
OFFICE

IN THE MATTER OF:

INTERPRETATION OF THE  
QUALIFICATIONS OF JUDICIAL  
COMPLAINTS COMMISSION  
MEMBERS

IN THE MATTER OF:

CONTRAVENTION OF ARTICLES  
122, 143, 144, 216, 236 OF THE  
CONSTITUTION

IN THE MATTER OF:

ARTICLES 1, 2, 4, 8, 9, 128, 267, 272

IN THE MATTER OF:

THE JUDICIAL CODE OF  
CONDUCT ACT NUMBER 13 OF  
1999 AS AMENDED BY ACT NO.  
13 OF 2006

BETWEEN:

TRESFORD CHALI

PETITIONER

AND

THE JUDICIAL COMPLAINTS COMMISSION

1<sup>ST</sup> RESPONDENT

THE ATTORNEY GENERAL

2<sup>ND</sup> RESPONDENT



**Coram:** Shilimi, DPC, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe and Mulife, JJC on 12<sup>th</sup> February, 2025 and 23<sup>rd</sup> July, 2025.

**For the Petitioner:** In- Person

**For the Respondents:** Mr. M. Muchende SC., Solicitor General;  
Ms. L. I. Malawo-Daka, Principal State Advocate; Mr. C. Watopa, Senior State Advocate and Mrs. M. N. Mulusa, Senior State Advocate

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## **RULING**

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**Cases referred to:**

1. Hakainde Hichilema and Geoffrey Bwalya Mwamba v Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and the Attorney General 2016/CCZ/0031
2. John Sangwa and the Law Association of Zambia v The Attorney General 2021/CCZ/ 0012
3. Godfrey Miyanda v Matthew Chaila (Judge of the High Court (1985). Z.R. 193 (H.C)
4. Lusaka City Council v Mutale (1996) ZR 75
5. Mwale v Attorney General (2014) ZMSC 41



6. R v Secretary of State for Foreign and Commonwealth Affairs, *ExParte* World Development (1995) 1 WLR 386
7. Arthur Lubinda Wina and Others v The Attorney General (1990-1992) Z.R. 95 (H.C)
8. Maxwell Mwamba and Stora Solomon Mbuzi v The Attorney General SCZ No. 10 of 1993, Appeal No. 12 of 1993
9. Dr. Daniel Pule and Others v The Attorney General and Others CCZ Selected Judgment No. 60 of 2018

**Legislation referred to:**

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

The Constitutional Act No. 8 of 2016

The Judicial (Code of Conduct) 1999 as amended by Act No. 13 of 2006

The Zambia Environmental Management Act No. 12 of 2011

**Other works referred to:**

Black's Law Dictionary, Bryan A. Garner, editor in chief, 10<sup>th</sup> Edition, Thomson Reuters Publishers, USA 2014

**Introduction**

- [1] The Constitution of Zambia, as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution), came into force on 5<sup>th</sup> January, 2016. The Constitution brought about many progressive clauses that were not provided for in the previous constitutional order. Some of those progressive clauses was the introduction of Article 127





which established the Constitutional Court in the Zambian judicial hierarchy.

- [2] The jurisdiction of the Court is provided for under Article 128 of the Constitution as follows:

**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) 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.**

**(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.**

**(4) A decision of the Constitutional Court is not appealable to the Supreme Court.**

- [3] With this specific mandate given to the Court, the general citizenry has also been given the right under Article 2 (a) of the Constitution to defend the Constitution by challenging any Acts of Parliament or statutory instruments; any act, omission measure or decision by a person in authority that contravenes the Constitution.
- [4] It is that right in defence of the Constitution that has prompted the Petitioner herein to bring an action before Court. The Petitioner claims that under Articles 1(5), 2 and 128 (3) of the Constitution, he has the standing (*locus standi*) to bring this case to Court as it is in public interest.
- [5] This ruling, therefore, determines the question as to whether or not in the circumstances of this matter, the Petitioner has standing. The ruling will also give guidance on the aspect of standing in public interest litigation before this Court as informed by the Constitution and other authorities on the subject.



## **Background**

- [6] The Petitioner who is a lawyer and an advocate of the Zambian Bar filed a petition into this Court on 28<sup>th</sup> October, 2024.
- [7] The factual matrix of the said petition, is that, following the decision of this Court in 2016 in the case of **Hakainde Hichilema and Geoffrey Bwalya Mwamba v Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and The Attorney General**<sup>1</sup>, a number of complaints were filed with the Judicial Complaints Commission (JCC) against the judges of this Court. Judges that were complained against were Justice Hilda Chibomba (retired) the then President of the Court, Justice Margaret Mulela Munalula the current President of the Court, Justices Annie Sitali, Mugeni Mulenga and Palan Mulonda.
- [8] The Petitioner states that these complaints were all dismissed by the JCC in 2016. That the JCC, decided however, to hear a fresh complaint that was later filed in 2024 against Justices Annie Sitali, Mugeni Mulenga and Palan Mulonda and this resulted in their removal from office.
- [9] The Petitioner states that prior to the constitutional amendments of 2016, the body tasked to discipline judges was the Judicial Complaints Authority (JCA). That to be a member of the JCA, one was supposed



to hold or should have held high judicial office. That the Constitution is now silent on the qualifications one should possess to be a member of the JCC.

- [10] The Petitioner further states that the JCC is now composed of members who do not hold or have not held high judicial office except for Justice Prisca Nyambe (retired High Court Judge). He therefore, seeks a declaration that except Justice Prisca Nyambe, the other members of the JCC are not qualified as they do not hold or have never held high judicial office. He claims that as a result of that disqualification, the JCC did not form a quorum to hear and recommend the removal from office of Justices Anne Sitali, Mugeni Mulenga and Palan Mulonda on 20<sup>th</sup> October, 2024.
- [11] The Petitioner implores us to issue an order to compel Parliament to enact legislation to specify the qualifications for the members of the JCC.
- [12] The Petitioner also alleges that when the JCC met to hear and determine the complaint against Justices Anne Sitali, Mugeni Mulenga and Palan Mulonda it veered into the realm of constitutional interpretation. That perusal of the JCC Report discloses that it indulged itself into constitutional interpretation of Article 102 of the Constitution





which stipulates that a presidential election petition should be held and concluded within 14 days. He therefore seeks a declaration that it is unconstitutional for the JCC to interpret the Constitution in the manner it did in its Report dated 20<sup>th</sup> October, 2024.

- [13] The Petitioner states that a perusal of the JCC Report aforesaid, reveals that it made a finding that the three removed Judges held an illegal Judges' conference over the weekend where they wrote their ruling. The Petitioner finds this finding unconstitutional as he believes that a judge can write an opinion at home over the weekend, in chambers or anywhere convenient to the judge. The Petitioner therefore, seeks a declaration that consultations at any time between or among Judges on matters they are handling in court does not amount to holding an illegal Judges' conference.
- [14] The Petitioner states that a person who holds letters patent constituting him/her as a judge should be presumed to be qualified. He states that perusal of the JCC Report reveals that it found the removed Judges unqualified to hold office of judge of the Constitutional Court. He claims that the JCC has no mandate to question the qualification of the judges once appointed as the inquiry into their qualifications is done prior to their appointment.





- [15] The Petitioner states that Article 144 (4) (a) and (6) of the Constitution provides for JCC proceedings to be held in camera. He claims that contrary to the dictates of Article 144 of the Constitution, the 1<sup>st</sup> Respondent did, on 13<sup>th</sup> October, 2024 advertise the notice of hearing in the newspaper informing the three removed judges to appear before it on 14<sup>th</sup> October, 2024. He alleges that the notice of hearing is part of the proceedings. He therefore, seeks a declaration that the Respondents abrogated the Constitution when they advertised part of the proceedings in the newspaper.
- [16] The Petitioner states that the allegations upon which the three judges were removed from office are based on the same facts as the previous complaints of 2016 where the JCA did not find them with any wrongdoing. He therefore, seeks a declaration that the matter that led to the removal of the three Judges from office was *res judicata*.
- [17] As a result of these allegations in the petition, the Petitioner *inter alia* seeks an order of certiorari to remove into the Constitutional Court for purposes of quashing the Report of the JCC dated 20<sup>th</sup> October, 2024 together with its findings and recommendations to the President to remove Justices Anne Sitali, Mugeni Mulenga and Palan Mulonda from



office. He also seeks a declaration that the President's removal of the three Judges is null and void *ab initio*. He also prays for costs.

### **Hearing**

[18] When this case came up for hearing on 12<sup>th</sup> February, 2025 we directed the parties to address us on the question as to whether or not the Petitioner has *locus standi* to have this matter heard and determined by this Court as they had submitted on the issue in their written briefs. Parties obliged and made oral submissions in open Court.

### **Petitioner's submissions**

- [19] On the issue as to whether or not he has standing to pursue the petition in Court, the Petitioner relied on Articles 1(1), (2) and (3), 2, 128(1), 128(1)(b) and 128 (3) (b) and (c) of the Constitution.
- [20] The Petitioner submitted that the phrase '*every person*' under Article 2 of the Constitution means that any person in the Republic of Zambia has a right to defend the Constitution by petitioning this Court. He argued that Article 2 of the Constitution has the same meaning assigned to section 25(1)(4) of the Judicial (Code of Conduct) Act No.



13 of 2006 which allows any member of the public to lay a complaint against a judge to the JCC.

[21] The Petitioner also submitted that his *locus standi* under Article 2 of the Constitution is similar to the *locus* that is granted to Zambians to defend the environment of the country under section 4 of the Zambia Environmental Management Act No. 12 of 2011. He argues that he is fortified in his submissions by Article 128 (3)(b) and (c) of the Constitution which gives the right to any person who alleges that the Constitution has been breached to petition the Constitutional Court.

[22] The Petitioner submitted that by virtue of him being a constitutional lawyer, he is under an obligation to ensure that the Constitution is not breached or abrogated by any public or private persons or bodies. Further, that the Petitioner has an obligation under Article 1(2) and 2 of the Constitution to defend the Constitution as well as to help develop jurisprudence in constitutional matters.

[23] The Petitioner cited the case of **John Sangwa & the Law Association of Zambia v The Attorney General**<sup>2</sup> where Mr. Sangwa a lawyer as well was able to commence an action in this Court when he believed that the Ministry of Finance was abrogating the Constitution by controlling the funds of the Judiciary. The Petitioner believes that just





like Mr. Sangwa, he has standing to commence a public interest litigation in this Court as the JCC abrogated the Constitution when it sat and heard the complaint against Justices Anne Sitali, Mugeni Mulenga and Palan Mulonda. He argued that his suit is premised on his constitutional duty to protect the independence and integrity of the Judiciary.

[24] With respect to the judicial review proceedings commenced by the three affected Judges before the High Court, it was the Petitioner's submission that, there would be no duplicity or multiplicity of actions as the procedures before this Court are different from those before the High Court.

[25] In written skeleton arguments filed earlier, the Petitioner argued that there is no need for a citizen to show direct or personal interest when pursuing public interest litigation before this Court. He added that the Constitution itself clothes citizens with this standing and that therefore, the only qualification that one must show to prove standing is that he is a citizen. In support of this assertion, the Petitioner drew the Court's attention to the High Court decision in the case of **Godfrey Miyanda v Matthew Chaila (Judge of the High Court)**<sup>3</sup> in which it was held that



the public have a right to have the independence of the judiciary preserved.

[26] The Petitioner further submitted that in other jurisdictions, even a letter by a citizen suffices to move the constitutional court and that this shows how citizens must be allowed to approach the Constitutional Court. The Petitioner also argued that the cases of **Lusaka City Council v Mutale**<sup>4</sup> and **Mwale v Attorney General**<sup>5</sup> cited by the Respondents on *locus standi* were decided before the amendments to the Constitution in 2016 and that these cases apply to judicial review and proceedings and not constitutional matters. It was the Petitioner's submission that the Constitution does not require a demonstration of direct personal interest or actionable injury for one to have standing in public interest litigation before this Court.

### **Respondents' Submissions**

[27] Prior to the hearing of the matter, the Respondents filed written skeleton arguments in support of answer and affidavit in opposition in which they challenged the Petitioner's *locus standi* and forum.

[28] The Respondents argued that although Article 2 of the Constitution grants every citizen a duty to uphold the Constitution, this duty is general and does not automatically confer standing to challenge the



validity of acts by constitutional bodies like the JCC, especially when the Petitioner has no direct and personal interest in the matter. In support of this argument, reliance was placed on the case of **Lusaka City Council**<sup>4</sup> in which the Supreme Court emphasized that a party seeking to challenge a government action must show direct personal interest, not merely a general duty.

- [29] Further reliance was placed on the case of **R v Secretary of State for Foreign and Commonwealth Affairs, *exparte* World Development**<sup>6</sup> in which the court held that:

.... standing requires demonstrated personal or public interest, particularly in cases involving the public's general duty to uphold the Constitution.

- [30] It was argued that *locus standi* is the ability of the party to demonstrate to the court sufficient connection to the harm. In support of this submission, reliance was placed on the case of **Arthur Lubinda Wina and Others v The Attorney General**<sup>7</sup>.
- [31] In light of these authorities, it was the Respondents' submission that the Petitioner's status as a constitutional lawyer alone does not meet this threshold.
- [32] As regards, the Petitioner's right to seek redress for alleged constitutional contravention, the Respondents submitted that Article





128 (3) of the Constitution grants individuals the right to seek redress only when they demonstrate an actionable injury or interest in the alleged contravention. That the Petitioner herein has not shown how the JCC's actions have personally affected his rights or interests. In support of this submission, the Respondents placed reliance on the case of **Mwale**<sup>5</sup> where the Supreme Court guided that the constitutional provisions cannot be invoked purely on the basis of a general allegation of contravention but that there must be direct and personal link to the claimed right.

[33] It was the Respondents' submission that the Petitioner herein has failed to establish this connection and consequently lacks *locus standi* under Articles 2 and 128 (1) and (3) of the Constitution as his claims have failed to demonstrate personal interest or actionable injury required by the Constitution.

[34] Submitting orally at the hearing, the Respondents referred the Court to the case of **Maxwell Mwamba and Stora Solomon Mbuzi v The Attorney General**<sup>8</sup> in which the Supreme Court held as follows:

We must now comment on the form and direction taken by these proceedings. Although the motion has questioned whether there was dignity and leadership by the President to appoint the two ministers the blows were landing on the two individuals who have never been heard and stood to be condemned and





stripped off office unheard. No Court of Justice can be called upon to make a declaration which is always a discretionary remedy obviously injustice would be visited upon persons who have not been heard but would have been directly affected by discretionary order to the proceedings to which they have not been made party.

[35] Applying the above case to the present petition, it was argued that the blows in this matter are landing on individuals that are not party to this action. It was submitted that the individual judges involved in this matter are capable of defending themselves in those matters. In this regard, the Court was asked to take judicial notice of the fact that the affected judges have already taken judicial review action pending determination before the High Court. That therefore, the Petitioner herein is being a meddlesome private attorney general trying to advance a cause which does not have a direct bearing or effect on him.

#### **Analysis and determination**

- [36] We have considered the arguments advanced by the parties in respect of the issue before this Court.
- [37] We consider that the issue for determination in the circumstances of this case is whether or not the Petitioner has *locus standi* to bring the petition herein before this Court. In short, does the Petitioner possess the necessary interest to bring an action before this Court?



[38] We begin by looking at how the Latin maxim *locus standi* is defined. The Black's Law Dictionary, 10<sup>th</sup> Edition at page 1084 defines *locus standi* as:

**The right to bring an action or to be heard in a given forum.**

[39] *Locus standi* in simple English is the standing of someone to bring litigation before court. At common law, a litigant has to comply with two requirements in order to bring an action or to be heard before court. These requirements are; the necessary capacity to sue and a demonstrable legal interest in the matter at issue.

[40] In this jurisdiction, the legal foundation of *locus standi* as regards the right for a person to assert his/her rights in the Constitutional Court is the Constitution. Articles 2 of the Constitution provides as follows:

**Every person has the right and duty to—**

- (a) defend this Constitution; and**
- (b) resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution. (Emphasis added)**

[41] In Articles 43 (2) (a) of the Constitution, every citizen has been given a responsibility to acquire basic understanding of the Constitution and to promote its ideals and objectives.

[42] Article 128(3) of the Constitution further provides that:

- (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.**

[43] In addition to these constitutional provisions, section 11 (1) and (2) of the Constitutional Act No. 8 of 2016 (the Act) provides for the right of standing before the Constitutional Court in the following terms:

**(1) The parties to a matter before the Court may appear in person or be represented and appear by a practitioner.**

**(2) Subject to subsection (1), a Court proceeding may be instituted by-**

**(a) a person acting on behalf of another person who cannot act in their own name;**

**(b) a person acting as a member of, or in the interest of, a group or class of persons;**

**(c) a person acting in the public interest; or**

**(d) an association acting in the interest of one or more of its members.**

[44] From a reading of the above provisions of the Constitution, the Constitution mandates any person who alleges breach it to file a petition on his/her own behalf or on behalf of another person who cannot act in their own name. Further every person has a right to seek interpretation of the Constitution before this Court. Section 11 of the





Act is also clearly worded such that a petition can be brought in various instances including by a person acting on behalf of, or in the interest of a group or class of persons or by a person acting in the public interest.

[45] This is what we held in the case of **Dr. Daniel Pule and Others v The Attorney General and Others**<sup>9</sup> that:

As regards *locus standi*, the modern approach to constitutional matters supports the extended as opposed to the narrow “own interest” standing favoured by the common law. As such Article 43 (2) (a) of the Constitution as amended, includes among the tabulated responsibilities of citizens, the following: “A citizen shall endeavor to acquire basic understanding of this Constitution and promote its ideals and objectives”. In our considered view, one of the ways in which citizens can acquire this understanding and be able to promote its ideals and objectives is by seeking authoritative interpretation of the provisions of the Constitution.

Nevertheless, access to the Court is circumscribed by section 11 of the Constitutional Court Act No. 8 of 2016 in order to protect the Court from busy bodies.

[46] In the present case, the Petitioner has moved this Court by invoking Articles 1, 2 and 128 of the Constitution in his capacity as a Zambian citizen bringing up public interest litigation and that by these provisions of the Constitution, he has standing to bring up the petition before us. In his petition, he alleges contravention of Articles 122, 143 144, 216 and 236 of the Constitution by the Respondents.



[47] As we have already stated earlier, the legal foundation for standing in constitutional matters in this jurisdiction is the Constitution. Articles 1 (5), 2 and 128 of the Constitution give that right of standing to every person to bring an action before this Court. Section 11 (2) (c) of the Act also gives the right to a person acting in the public interest to institute proceedings in this Court.

[48] By virtue of Articles 1 (5), 2, 43 (2) (a) and 128 of the Constitution as read with section 11 of the Constitutional Court Act, we hold that the Petitioner has sufficient standing to bring this matter to be heard and determined by this Court.

[49] We therefore, order that this matter will proceed to trial to be held in open Court on 29<sup>th</sup> July, 2025 at 09.00 hours.

[50] We make no order as to costs.




A. M. SHILIMI

**DEPUTY PRESIDENT - CONSTITUTIONAL COURT**



M. MUSALUKE

**CONSTITUTIONAL COURT JUDGE**



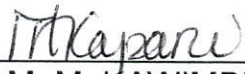
M.K. CHISUNKA


**CONSTITUTIONAL COURT JUDGE**



  
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J. Z. MULONGOTI  
CONSTITUTIONAL COURT JUDGE

  
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M. Z. MWANDENGA  
CONSTITUTIONAL COURT JUDGE

  
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M. M. KAWIMBE  
CONSTITUTIONAL COURT JUDGE

  
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K. MULIFE  
CONSTITUTIONAL COURT JUDGE

