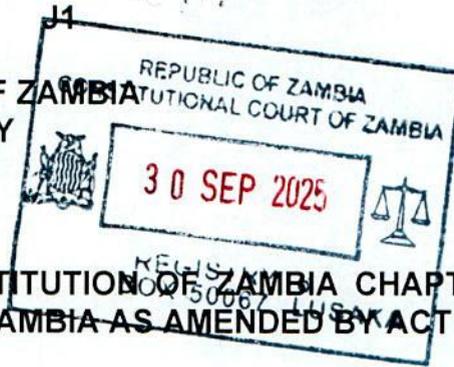


IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)



2025/CCZ/005

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE
LAWS OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016
AND

IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 67 (2) (a) OF THE
CONSTITUTION OF ZAMBIA
AND

IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 199 (2) OF THE
CONSTITUTION OF ZAMBIA
AND

IN THE MATTER OF: ALLEGED VIOLATION OF ARTICLE 199 (3) OF THE
CONSTITUTION OF ZAMBIA
AND

IN THE MATTER OF: FAILURE OF THE LUSAKA CITY COUNCIL TO PUBLISH
COUNCIL RESOLUTION DATED 27TH SEPTEMBER 2023
IN THE GOVERNMENT GAZETTE WITHIN 28 DAYS AND
FAILURE TO REPORT THE LUSAKA CITY COUNCIL
RESOLUTION DATED 27TH SEPTEMBER, 2023 TO
PARLAMENT WITHIN THE REQUIRED PERIOD
AND

IN THE MATTER OF: FAILURE OF THE LUSAKA CITY COUNCIL TO VARY THE
PLANNING PERMISSION FEES THROUGH A
STATUTORY INSTRUMENT

BETWEEN:

TC PROMOTIONS LIMITED

1st PETITIONER

ORIENTAL BILLBOARD ADVERTISING LIMITED

2nd PETITIONER

PERITUS CORPORATE SOLUTIONS LIMITED

3rd PETITIONER

AND

LUSAKA CITY COUNCIL

RESPONDENT

Coram: Munalula PC, Shilimi DPC, Musaluke, Chisunka, Mulongoti, Mwandenga,
Kawimbe, JJC on 12th June, 30th June and 30th September, 2025.

For the Petitioners: Mr. P. Chulu, Mr. C. Dioma & Mr. J. Nsululu of Messrs Patrick Chulu Legal Practitioners

For the Respondent: Ms. K. Sikwibele - Director Legal Services, Ms. A.S Mwanamakondo - Council Advocate, Mr. A. Nsama - Legal Officer and Mr. S. Banda - Senior Legal Assistant

JUDGMENT

Kawimbe JC delivered the Judgment of the Court

Cases referred to:

1. Hakainde Hichilema and Geoffrey Bwalya Mwamba v Edgar Chagwa Lungu, Inonge Mutukwa Wina and The Attorney General 2016/CC/0034
2. Fredson Kango Yamba v the Principal Resident Magistrate, Anti-Corruption Commission and the Attorney General 2023/CCZ/003
3. Gervas Chansa v The Attorney General 2019/CCZ/004
4. ZAMESCO Limited v Nakonde District Council SCZ Appeal No. 209 of 2016
5. Scrirocco Enterprises v Kafue District Council and Attorney General SCZ Appeal No. 60 of 2011

Legislation referred to:

The Constitution of Zambia, Chapter 1 of the Laws of Zambia, as amended by Act No. 2 of 2016

The Constitutional Court Act No.8 of 2016

Rules of the Supreme Court of England 1965 (Whitebook) (1999 Edition)

Local Government Act No. 2 of 2019

Urban and Regional Planning Act No. 3 of 2015

Business Regulatory Act No. 3 of 2014

Other works referred to:

1. John Hatchard, Muna Ndulo, Peter Slinn, Comparative Constitutionalism and Good Governance in the Commonwealth – An Eastern and Southern African Perspective, Cambridge University Press, USA, 2004
2. The First Draft Report of the Technical Committee on Drafting the *Zambian Constitution*. 2012

3. Black's Law Dictionary 10th Edition by Bryan A. Garner, Thomson Reuters Publishers USA 2014
4. Oxford Advanced Learner's Dictionary, UK, Oxford University Press, 8th ed., 2010
5. Erskine May, Parliamentary Practice 21st ed., Butterworths, 1989
6. Bennion FAR, Statutory Interpretation - A Code, 3rd ed., Butterworths, 1997

When we sat to hear this matter, our learned brother Justice M.Z. Mwandenga was part of the panel. However, due to his proceeding on official leave, the judgment is now delivered by the majority of the Court.

INTRODUCTION AND FACTUAL BACKGROUND

- [1]** The petition before Court was filed on 14th February, 2025. It was supported by an affidavit and skeleton arguments of even date. The petitioners' reply, replying affidavit and skeleton arguments are all dated 13th March, 2025. The gist of the petitioners' case is that they are all companies involved in outdoor advertising business, while the respondent is a local authority incorporated under the Local Government Act No.2 of 2019 (Local Government Act) and is designated as a planning authority under the Urban and Regional Planning Act No. 3 of 2015 (the Urban and Regional Planning Act).
- [2]** The petitioners aver that as part of their business; they erect and display billboards within the City of Lusaka. In order to conduct their business, they are required to obtain planning permission from the

respondent under the Urban and Regional Planning Act. That the Urban and Regional Planning Act further requires the petitioners to pay planning permission fees when making applications, and which the respondent has categorised as follows: -

- (a) Interview fees to assess an applicant's capability to conduct outdoor advertising priced at USD1000;
- (b) Advertising fees payable upon approval of an application for planning permission and charged daily thereafter depending on the location of a billboard; and
- (c) Renewal fees payable by an applicant who is interested in renewing expired planning permission.

[3] It was the petitioners' averment that over the years, the respondent has been exponentially increasing planning permission fees without any reasonable justification and in a manner that does not promote transparency and accountability. That the council's decision to increase fees by way of resolutions, instead of statutory instruments contravenes constitutional and statutory requirements. Consequently, the petitioners' businesses have been negatively affected more so that they have had no means of interrogating the respondent's resolutions.

- [4] More pointedly, the petitioners aver that on 27th September, 2023, the respondent passed a resolution increasing advertising fees by 100% under minute No. SC/09/09/2023. That it also introduced new planning permission fees referred to as billboard management fees at ZMW1,000. That the respondent communicated the resolution to some outdoor advertising companies in mid-March 2024 but not to the 1st and 2nd petitioners who only became aware of the changes when they went to pay the fees at the old rates. The petitioners further aver that the increments affected the 3rd petitioner who finds clients on behalf of the petitioners and collects debt on behalf of the 1st and 2nd petitioners.
- [5] According to the petitioners, the resolutions to increase the advertising fees by 100% and to introduce a new annual billboard management fee were not published in the Government Gazette within 28 days of their making as required by the Constitution. In further contravention of the Constitution, the petitioner averred that the respondent did not submit a report to the National Assembly explaining the variation of fees.
- [6] The petitioners allege that the respondent violated:
- (a) **Article 67(2) of the Constitution when it failed to publish its resolution dated 27th September, 2023 which introduced annual billboard management fees and increased advertising fees by**

100%, within 28 days of making the decision in the Government Gazette;

- (b) Article 199 (3) of the Constitution when it failed to submit a report to the National Assembly explaining the variation of fees; and
- (c) In the alternative, that the respondent violated Article 199(2) of the Constitution when it failed to vary the planning permission fees through a statutory instrument as required by the Constitution.

[7] In consequence, the petitioners seek the following relief:

- i) A declaration that the respondent's failure to publish the resolution in the Government Gazette and the failure to submit it to the National Assembly violates the Constitution;
- ii) In the alternative, a declaration that the respondent's failure to vary the advertising fees through a statutory instrument contravenes the Constitution;
- iii) An order prohibiting the respondent from varying or introducing advertising fees in the absence of a statutory instrument, and if varied, via a statutory instrument, an order prohibiting the respondent from varying the fees without advertising in the Government Gazette;
- iv) An order directing the respondent to compensate the 1st and 2nd petitioners the increased fees they paid in compliance with the resolutions varying the fees;

v) A declaration that the respondent's resolution dated 27th September 2023 introducing the new annual billboard fees and increasing the fees by 100% is null and void for contravening the Constitution.

vi) Interest; and

vii) Costs.

[8] The petitioners largely restated their case in the affidavit accompanying the petition which was deposed to by Chipa Chibwe, the Director of the 1st petitioner company. He stated that the respondent granted the 1st petitioner a permit to advertise on various sites in Lusaka after it approved its application for planning permission and paid the advertising fees. However, that while relying on that business arrangement, the respondent illegally increased the outdoor advertising fees in mid-March 2024, through a resolution, which has negatively affected the 1st and 2nd petitioners' businesses.

[9] That the 3rd petitioner's business was equally affected because the 1st and 2nd petitioners hiked their service fees. In addition, that the 3rd petitioner is seeking recourse from the Zambia Public Procurement Authority (ZPPA) on the respondent's decision to award debt collection contracts to another company without floating the contract tender. In

sum, it was deposed that the respondent's decision is detrimental to the petitioners' businesses and unconstitutional.

RESPONDENT'S CASE

- [10] The respondent filed an answer, which was supported by an opposing affidavit and skeleton arguments all dated 5th March, 2025. The thrust of the respondent's case is that outdoor advertising business, which includes billboards and the display of advertisements in public places falls under its exclusive mandate as provided by Article 147(2) of the Constitution. That it manages and regulates the display of billboards in the City of Lusaka by granting permission and lease agreements for advertising rights in the City to outdoor advertising companies.
- [11] That it charges a one-off interview fee of ZMW 25,000 for companies intending to be its agents in the advertising business. Further, that companies or persons who advertise on its billboard sites through agents pay half the price. That direct applicants do not pay any interview fees at all but pay a higher rate for their billboard sites compared to those who register through its agents. That the decision whether to register as an agent or not lies with an applicant.
- [12] The respondent denied that it has been exponentially increasing billboard fees. Instead, that it has been locked out from charging

appropriate billboard fees for over a decade because of ongoing litigation before various courts initiated by the advertising companies. These include the case of *Impact Media and 6 Others v Lusaka City Council 2011/HP/531* where the parties entered into a consent order which authorised the advertising companies to dictate the fees the respondent could charge in regulating and managing billboards. However, that the court set aside the consent order and that, thereafter, the respondent introduced a new annual billboard management fee of ZMW1,000 on the database so as to effectively manage billboards. That decision however, was contested and subsequently a case was instituted in the High Court under Cause No. 2023/HP/0406.

- [13]** The respondent asserted that there is no legal requirement under the Constitution or any other law compelling it to publish its resolutions in the Government Gazette or to report variation of fees to the National Assembly. Instead, that it is authorised by the law to make resolutions or by laws. That as a result, the compensatory relief sought by the 1st and 2nd petitioners for paying increased fees is misapprehended as no increment was effected due to active litigation in Cause No. 2024/HP/0406.

- [14] The respondent's opposing affidavit, which was deposed to by Biggie Chanda, its Director of City Planning, substantially reproduced the contents of its answer. He however, deposed that the categorisation of planning permission fees into interview, advertising and renewal fees was necessary and legally justified within the respondent's mandate. That in consequence, the petitioners did not suffer any harm because the respondent's actions were undertaken in compliance with applicable laws and in the exercise of its administrative discretion.
- [15] The deponent denied that the Council Resolution dated 27th September, 2023 is a statutory instrument, and was passed in violation of Article 199 (2) of the Constitution. In concluding, he urged the Court to dismiss the petitioner's case for being frivolous and unmeritorious.

NOTICE OF MOTION

- [16] Before we could proceed to hear the petition, the respondent filed a notice of motion on 20th March, 2025 raising a preliminary objection, which essentially challenged the invocation of the Court's jurisdiction in this matter. The notice of motion was filed pursuant to Order 14A Rules 1 and 2 of the Rules of the Supreme Court of England (Whitebook), together with a supporting affidavit and skeleton

arguments of even date. The jurisdictional questions raised were as follows:

- (a) Whether the 3rd petitioner has *locus standi* to be joined in this petition?;
- (b) Whether the matters in contention raise constitutional questions warranting the jurisdiction of the Constitutional Court?; and
- (c) Whether the matters raised in this petition appear to have been previously or concurrently litigated in other forums leading to duplicative proceedings or a multiplicity of actions?

[17] We heard the notice of motion on 12th June, 2025 and dismissed it for being unmeritorious. We now give reasons for our decision.

[18] In resolving the issues raised *in limine*, we firstly determined whether this matter amounted to a multiplicity of actions because our finding thereon could be dispositive of the petition.

[19] The respondent's contention was that the petitioners' case appeared to have been previously or concurrently litigated in other fora leading to duplicative proceedings or a multiplicity of actions in this petition. The respondent also argued that the petitioners were involved in ongoing judicial review proceedings in the High Court against it under Cause No. 2024/HP/0406 which sufficed as adequate forum at which the parties could fully ventilate their positions in the dispute.

- [20] In addition, that Chipa Chibwe the Director of the 1st petitioner together with the 3^d petitioner were pursuing other actions in the High Court under Cause No. 2024/HP/0060 against *Frames Outdoor Media and the Road Development Agency*. That the subject matter in all those cases concerned the assailed respondent's resolution, which sought to increase billboard and advertising fees and was also the substance of this petition. The result being that the petition amounted to a multiplicity of actions and must be dismissed.
- [21] The respondent buttressed its contention by referring the Court to the order for leave to apply for judicial review under Cause No. 2024/HP/0406, which showed the parties as *Chipa Chibwe (suing in his capacity as Chairman of the Outdoor Advertising Association of Zambia) (applicant) and the Lusaka City Council (respondent)*. The notice on the statement in support of the *ex parte* application for leave to apply for judicial review was also produced showing that the relief being pursued sought to challenge the respondent's impugned resolution to implement new annual billboard management fees.
- [22] The respondent also drew the Court's attention to Cause No. 2024/HP/0066, where the parties are shown as *Chipa Chibwe (suing in his representative capacity as Chairman of the Outdoor Advertising*

Association of Zambia (1st plaintiff) and Peritus Corporate Solutions Limited (2nd plaintiff) v Frames Outdoor Media Limited and Road Development Agency (as 1st and 2nd defendants). It was then submitted that in that cause, the order of interim injunction granted to the 2nd plaintiff was discharged and eventually the matter was dismissed for want of jurisdiction.

[23] Regarding the law on multiplicity of actions and abuse of court process, we stated in the case of **Hakainde Hichilema and Geoffrey Bwalya Mwamba v Edgar Chagwa Lungu, Inonge Mutukwa Wina and The Attorney General¹** that:

1. Abuse of process is a term used where there is no bona fide or proper use of the court such as where a party institutes an action knowing fully well that there is no merit but does it to vex or oppress another party. This includes issues of re-litigating a matter, spurious claims, and hopeless proceedings.
2. The conduct of the applicants in filing a multiplicity of actions against the respondents was akin to forum shopping which is frowned upon by the courts and also amounts to abuse of court process.
3. The applicants' action was a veiled attempt to re-litigate the matter and comes within the ambit of abuse of court process.

[24] With regard to our adjudicative jurisdiction in constitutional matters, except for part III of the Constitution (Bill of Rights) which falls under the jurisdiction of the High Court and on appeal to the Supreme Court,

we held, in the case of **Fredson Kango Yamba v the Principal Resident Magistrate, Anti-Corruption Commission and the Attorney General²**, that:

Article 1(5) requires that any matter relating to the Constitution to be heard by the Constitutional Court. Article 128 of the Constitution vests original and final jurisdiction on constitutional matters solely in the Constitutional Court, subject only to Article 28. Thus, matters relating to the interpretation, violation and contravention of the Constitution fall within the jurisdiction of this Court. Therefore, the Constitutional Court has the sole mandate of interpreting constitutional provisions and determining of the breach or contravention of constitutional provisions. (emphasis our own)

[25] Simply put, the Constitutional Court is the only Court in our country that has exclusive jurisdiction to interpret constitutional provisions and/or to ascertain whether any breaches or violations of constitutional provisions have been committed under Article 128 of the Constitution.

[26] In the matter before us and without delving into the merits of the petition, we note that the substantive relief sought by the petitioners relates to the respondent's failure or omission to publish its resolution dated 27th September, 2023 in the Government Gazette. The petitioners further allege that the respondent breached the Constitution by failing to submit a report of the attacked resolution to the National Assembly.

[27] In the alternative, the petitioners contend that the respondent cannot vary advertising fees by a resolution except through a statutory instrument as provided in the Constitution. The petitioners' contentions are located in Articles 67 (2), 199 (2) and (3) of the Constitution, which they believe raise constitutional questions to be determined by the Court.

[28] In the case of **Gervas Chansa v The Attorney General**³ we stated that:

A constitutional question is defined in the Black's Law Dictionary as a legal issue resolved by the interpretation of the Constitution rather than the statute.

[29] We went further to find that the Constitution presently does not define what amounts to a constitutional question or matter. As such, what amounts to a constitutional question or matter can only be gleaned from a reading of the Constitution itself.

[30] Article 128(1) of the Constitution confers the Court with adjudicative jurisdiction over constitutional matters except for those which are limited by Article 28 as follows: -

128(1) Subject to Article 28, the Constitutional Court has original 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 and an election of the President;
- (d) appeals relating to election of Members of Parliament and Councillors;
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.

[31] In terms of Article 128 (1) of the Constitution it can be said that a constitutional question or matter arises: -

- (i) when the issue in dispute involves the interpretation of the Constitution;
- (ii) where a dispute relates to the violation or contravention of the Constitution;
- (iii) where a dispute relates to the President, Vice President or an election of a President;
- (iv) on appeals relating to the election of Members of Parliament and councillors;
- (v) where a question arises as to whether or not a matter falls within the jurisdiction of the Constitutional Court.

[32] In other words, what can be stated of these classifications is that they are useful theoretical tools in assisting litigants on which matters they can bring to the Constitutional Court. Simply put, litigants are not

entitled, outside these classifications, to convert every issue into a constitutional question by filing actions disguised as constitutional petitions. That is to say, the mere invocation of a constitutional provision will not entitle a litigant to proceed before this Court because a constitutional question must be one raised within the ambit of Article 128 (1) of the Constitution and its resolution must take place within the framework of the Constitution and not any other law.

[33] In the matter before us, and at face value, the relief sought by the petitioners rested on allegations that the respondent breached the Constitution by imposing revised billboard management and advertising fees through unconstitutional means, namely, the respondent's resolution dated 27th September, 2023. The petitioners argued that the correct procedure on revision of fees by local authorities should be done through statutory instruments as provided under Articles 67 (2), 199 (2) and (3) of the Constitution. After assessing the contested positions, we were of the view that the only way the allegations could be determined, was by examining these questions within the framework of the Constitution.

[34] In other words, the determination of this dispute required us to examine the constitutional provisions that are alleged to have been violated.

Consequently, we saw no duplicity between the subject matter of this petition and the judicial review proceedings before the High Court, whose purpose is for that Court to inquire into the legality of the respondent's use of power through its supervisory jurisdiction over the Executive.

[35] Our conclusion, therefore, was that this petition did not amount to a multiplicity of actions and the respondent's preliminary objection as to whether the matters in the petition raise constitutional questions was *prima facie* answered in the affirmative.

[36] As for the issue whether the 3rd petitioner had *locus standi* in the petition, the respondent contended that it had no relationship with that company and it thereby lacked legal capacity to stand in this matter. On the other hand, the 3rd petitioner argued that it was an agency company in the outdoor advertising industry and is likely to be affected by the respondent's resolution.

[37] It is trite that Article 2 (a) and (b) of the Constitution confer *locus standi* on every person to defend the Constitution as follows:

2. **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.**

[38] The manner in which litigants can access the Court is provided in section 11 of the Constitutional Court Act (CCA). In particular section 11 (2) (b) of the CCA provides that:

2. Subject to subsection (1), a court proceeding may be instituted by

...

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

[39] In the petition, the 3rd petitioner is described as an agency company in the business of finding clients on behalf of outdoor advertising companies on commission basis. Further that it offers debt collection services to outdoor advertising companies. It was our opinion that the 3rd petitioner was acting in a representative capacity. We thereby found that the 3rd petitioner had the requisite *locus standi*.

[40] We accordingly dismissed the respondent's notice of motion for lack of merit.

[41] We shall now move to deal with the main petition which we heard on 30th June, 2025. Suffice to state that at the hearing, the parties reiterated their respective cases on record and for this reason, we shall not reproduce their oral submissions.

CONSIDERATION AND DETERMINATION

[42] We have considered the petition, answer, the parties' affidavits and written arguments in support and rebuttal thereof of the issues herein. The petitioners identified three key issues falling for determination as follows: -

- a) **Whether the respondent violated Article 67(2) of the Constitution when it failed to publish its resolution dated 27th September, 2023 which introduced annual billboard management fees and increased advertising fees by 100% in the Government Gazette and within 28 days of making the decision?**
- b) **Whether the respondent violated Article 199 (3) of the Constitution when it failed to submit a report of its resolution to the National Assembly explaining the variation of fees?**
- c) **In the alternative, if the Court finds that the respondent's resolution is not a statutory instrument, whether or not the respondent violated Article 199(2) of the Constitution which requires it to vary fees through a statutory instrument?**

[43] We agree with the petitioner that these are the issues which arise for determination of the petition. These issues, in our view, are intertwined and the question whether the respondent's increment of fees should have been made via statutory instrument, although mounted as an alternative argument, is deeply rooted in the authority bestowed on the

respondent to impose levies and fees. We shall therefore deal with all the issues raised in the petition at the same time.

[44] The petitioners argued that the respondent's special council meeting at which the impugned resolution was passed violated Article 67(2)(a) of the Constitution, which states:

**67. (2) A statutory instrument shall be published in the Gazette -
(a) not later than twenty-eight days after it is made.**

[45] They next contended that the revision of fees should have been done by way of statutory instrument insisting that the definition thereof under Article 266 of the Constitution, was all encompassing and includes '*other similar legal instruments*' made by Act of Parliament which covers the respondent's resolution.

[46] The petitioners further argued that their position was fortified by section 27 (1) and (2) of the Local Government Act, and the case of **ZAMESCO Limited v Nakonde District Council**⁴ where the Supreme Court opined that the power granted to a local authority under the Local Government Act to impose licence and permit fees could only be exercised by way of statutory instrument.

[47] In reply, the respondent argued that the assailed resolution was not a statutory instrument and did not qualify to be considered under the

definition thereof in Article 266 of the Constitution. That if anything, the resolution was merely an administrative decision and did not possess the force of delegated legislation. That therefore, the respondent did not violate Articles 67(2) (a) and 199(2) of the Constitution and in consequence, the petitioners' claims had no substance.

[48] Before delving into the substance of the dispute, a brief discussion of the current local government system is necessary in order to place the matter in proper context. Before 2016, there were calls from the public to introduce a more localised governance system in the country that would promote an equitable distribution of power directly to the people in order to enhance their participation in the governance of their local affairs.

[49] The learned authors Hatchard, Ndulo and Slinn in their text **Comparative Constitutionalism and Good Governance in the Commonwealth - An Eastern and Southern African Perspective** at pages 185 – 187 state on devolution that: -

The shift towards devolution is largely a reflection of the political evolution towards more democratic and participatory forms of government that seek to improve the responsiveness and accountability of political leaders to their electorates. It is premised on the fundamental belief that once they are entrusted with their own destiny through the medium of popular local democratic institutions,

human beings can govern themselves in peace and dignity in pursuit of their collective well-being. The general arguments to support devolution are therefore clear... On the economic side, a devolved system allows the opportunity to formulate and implement regional or sub-regional economic development plans within the context of national goals. This enables development strategies to be targeted more accurately towards the specific needs of particular communities and areas of the economy.

[50] Simply put, the justification for a devolved local government system is seen as the best form of participation by citizens in their own destiny through institutions that are close to their localities and areas of economy.

[51] According to the Final Report of the Technical Committee on Drafting the Constitution (2013), and at the time of formulating the first draft of the current Constitution, recommendations were made by the public on their preferred local governance system. It was also reported by the Committee at page 517 that the people's preference leaned towards devolution in the expectation that the local governance system would be more participatory and representative of their needs. Consequently, Article 197(1) and (2) of the draft Constitution, was formulated in a bid to foster the people's aspirations and provided as follows -

197. (1) The management and administration of the affairs of the State shall be devolved from the national level to the local level while

retaining, at the national level, the Executive authority, as provided for under this Constitution.

(2) The concurrent and exclusive functions of the national and local levels of government, and those of the provincial administration, shall be as specified by an Act of Parliament and as listed in the Schedule.

[52] In the Final Report of the Technical Committee on Drafting the Constitution at page 517, part of the rationale for the inclusion of Article 197 was that -

...the Committee observed that achieving meaningful development at local level without devolving economic and financial functions may be difficult. The Committee, therefore, identified the allocation of concurrent and exclusive functions of the national and local levels of government, and those of the provincial administration, as a key issue to be referred to the Constitution conventions in order to allow Zambians to debate the matter further.

[53] Article 197(1) and (2) of the draft Constitution was later encapsulated with slight modification in Article 147 of the Constitution, however maintaining the intention of the draft Article 197.

[54] Article 147 of the Constitution vests the system of devolved governance at the local government level. This represents a critical system of local government as desired by the people to devolve power from the national tier government to the local level in order to enhance their participation in the governance of the localities.

[55] In this regard, Article 147 (1) of the Constitution in laying out the system of devolved governance provides that -

147. (1) The management and administration of the political, social, legal and economic affairs of the State shall be devolved from the national government level to the local government level.

[56] Article 147(2) of the Constitution further provides for the functions of local authorities as follows:

147. (2) The concurrent and exclusive functions of the national, provincial and local government levels are as listed in the Annex and as prescribed.

[57] Part C of the Annex of the Constitution pertinently provides for the exclusive functions of local authorities as follows:

Local Authorities' exclusive functions ... Billboards and the display of advertisements in public places.

[58] According to Article 147 (2) of the Constitution, the respondent is imbued with the power to among others, regulate billboards and the display of advertisements in public places, which attracts attendant fees or charges.

[59] We find it imperative at this point to define concepts that are relevant to this dispute as regards raising public revenue. Article 266 of the Constitution defines tax as follows: –

includes rates, levies, charges, tariffs, fees, tolls and duties.

[60] The **Black's Law Dictionary, 10th ed., (2014)** amplifies tax to mean –

A charge, usually monetary imposed by the Government or persons, entities, transactions or property to yield public revenue.

[61] The **Black's Law Dictionary** (supra) defines a levy as:

The imposition of a fine or tax; the fine or tax so imposed.... To impose or assess (a fine or tax) by legal authority...

[62] The **Oxford Advanced Learner's Dictionary, 8th ed., (2010)** defines a charge as -

The amount of money that somebody asks for goods and services.

[63] A fee is defined in the **Oxford Advanced Learner's Dictionary** (supra) as –

An amount of money that you pay for professional advice or services.

[64] From the definitions, it can be discerned that a tax is a mandatory financial charge, while a levy is a mandatory fine or tax which can be imposed by the Government or entities or bodies so authorised to collect public revenue. On the other hand, fees or charges are characterised as payments made for services provided.

[65] Moving on, Article 199 of the Constitution provides that -

199. (1) A tax shall not be imposed except as prescribed.

(2) Where legislation confers power on a person or an authority to waive or vary a prescribed tax, the power shall be exercised through a statutory instrument.

(3) A report explaining a waiver or variation of a tax shall be submitted to the National Assembly within 21 days of the publication of the statutory instrument.

[66] Put in other words, Article 199 of the Constitution permits those conferred with power to impose taxes to exercise that function within the limits prescribed by law. Additionally, that the imposition of tax must be gazetted and a report submitted to the National Assembly within a prescribed time frame. As far as local authorities are concerned, Article 161 of the Constitution empowers them to impose, levy, recover and retain local taxes as prescribed.

[67] This now brings us to the question at the core of the dispute, that is whether the assailed council's resolution dated 27th September, 2023 amounts to a tax that should have been processed by way of statutory instrument as required by Articles 67 (2) (a) and Article 199 (2) of the Constitution?

[68] In our view, a brief discussion of the hierarchical structure of legislation in Zambia on constitutional supremacy is essential in resolving the dispute before us. The legal hierarchy starts with the Constitution which is the supreme law (*grundnorm*) in Zambia and outlines the structure of

the Government, the distribution of power, and the rights of individuals or other persons. Article 1(1) of the Constitution provides that -

1. (1) This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of its inconsistency.

[69] In addition, Article 1(3) of the Constitution binds all persons and institutions in Zambia to it by providing that –

1. (3) This Constitution shall bind all persons in Zambia, State organs and State institutions.

[70] All legislation thereafter, obtains its legitimacy from the Constitution, starting with principal legislation made by Parliament which emanates from policies issued by the Executive. Article 62(2) and (3) of the Constitution accordingly provides that:

62.(2) The legislative authority of the Republic is vested in and exercised by Parliament.

(3) A person or body, other than Parliament, shall not have power to enact legislation, except as conferred by this Constitution.

[71] Principal legislation contains enabling provisions for the creation of subsidiary legislation. The role of subsidiary legislation is to spell out in detail, the rules, regulations and procedures upon which the principal legislation is to be effected.

[72] In this country the principal legislation governing local authorities is the Local Government Act. Where it involves commercial undertakings of local authorities, the Act must be applied in deference to the Constitution and, Business Regulatory Act No.3 of 2014. Be that as it may, Article 151(1)(a),(f) and (j) of the Constitution empowers local authorities to exercise either a public law making function or to undertake private commercial enterprise respectively. The provisions cited above provide that:

151. (1) There is established a local government system where -

(a) functions, responsibilities and resources from the national Government and provincial administration are transferred to the local authorities in a co-ordinated manner;

...

(f) a sound financial base is established for each local authority with reliable and predictable sources of revenue;

(j) the right of local authorities to manage their affairs and to form partnerships, networks and associations to assist in the management of their respective districts and further their development is recognised.

[73] In addition, Article 152(1) of the Constitution on the local authorities public or private law making functions states that –

152. (1) A local authority shall -

(a) administer the district;

(b) oversee programmes and projects in the district;

(c) make by-laws; and

(d) perform other prescribed functions.

[74] In our view, Articles 151 and 152(1) of the Constitution are at the core of the system of local government in the country. As regards the public law-making function, that is, through by-laws, local authorities have power to establish detailed rules and regulations for managing their operations as prescribed in the Local Government Act. Alternatively, and in their private commercial function, the Local Government Act empowers local authorities to make resolutions as the means for conducting such functions.

[75] The distinction therefore, between the local authorities exercise of its public function as opposed to its private commercial function, is as defined in the Constitution. When and how the local authority will exercise that power or function depends on the manner it is prescribed in the Local Government Act. However, noting that local authorities have power to either make by-laws or pass resolutions in carrying out their operations.

[76] On the question whether the attacked resolution amounted to a statutory instrument, recourse must be made to the definition of the same in Article 266 of the Constitution which states –

A proclamation, regulation, rule, by-law, order or other similar legal instrument made under a power conferred by this Constitution or an Act of Parliament.

[77] By its nature, it can be stated that a statutory instrument derives its existence from the Constitution or an enabling statute. Parliament may therefore, delegate its law making function to a person or authority as provided for in Article 67(1) of the Constitution thus:

67. (1) Article 62 or 63 shall not prevent Parliament from conferring on a person or authority power to make statutory instruments.

[78] The rationale for such delegation of the parliamentary law-making function is aptly described by the learned author **Erskine May, Parliamentary Practice 21st ed., (1989)** who states at para 551-553 that –

It has been recognised that the greater number of details of an essentially subsidiary or procedural character which can be withdrawn from the floor of both houses (of Parliament), the more time will be available for the discussion of major matters of public concern. Consequently, legislative power is often conferred upon the executive by statute, and various arrangements are made for parliamentary scrutiny of its exercise.

[79] In addition, the learned author **Bennion on Statutory Interpretation A Code 3rd ed., (1997)** at page 172 states –

In conferring a delegated legislative power, Parliament often retains some measure of control over the exercise of the power. For example, it may require instruments made under it to be laid before Parliament and may make them subject to affirmative or negative procedure.

[80] Under the Constitution, Article 67(2)(a) provides that -

67. (2) A statutory instrument shall be published in the Gazette –
(a) not later than 28 days after it is made; ...

[81] This, in our view, is the means by which Parliament in this country exercises its power of control of delegated legislation. Where taxes are concerned, such exercise must be imposed within the relevant Act of Parliament to ensure that those who have authority can only do so within the limit of their powers as provided for in Article 199 of the Constitution.

[82] The **Oxford Advanced Learner's Dictionary** (supra) defines a resolution as –

A formal statement of an opinion agreed on by a committee or a council, especially by means of a vote.

[83] In other words, a resolution is not a law and aims at addressing administrative or non-legislative issues.

[84] It is therefore our view that the dispute between the parties is not made subject to the Constitution but rather to the Local Government Act and under a business arrangement. We are therefore not persuaded by the petitioner's arguments that it was the intention of the framers of the Constitution to lock the imposition of billboard fees or charges into the constitutional framework.

[85] If anything, a statutory instrument must receive its enabling power from an Act of Parliament and thereafter be signed by the responsible Minister in order to come into effect. Unlike a statutory instrument, a council resolution does not fall into the category of 'other similar legal instruments made under a power conferred by the Constitution or Act of Parliament' (Article 266 of the Constitution). This is because a resolution is an expression of the opinion or will of a local authority made by a vote in the exercise of its functions, and directed at specific actions without creating legislative requirements for the public.

[86] Consequently, we find and hold that the attacked resolution was not a statutory instrument and there was no need for it to be gazetted under Article 67(2) of the Constitution.

[87] We further find and hold that the respondent did not violate Article 199 (2) and (3) of the Constitution because its resolution was made in exercise of its private commercial function and did not raise any constitutional issue.

[88] Given the position we have taken above, we are of the view that consideration of the other relief sought is *otise*.

FINAL ORDERS

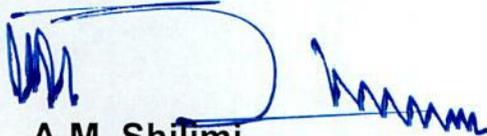
[89] The petition lacks merit and is hereby dismissed.

[90] The parties shall bear their own costs.



M.M. Munalula (JSD)

President, Constitutional Court



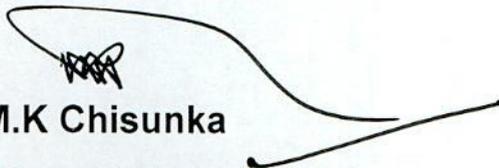
A.M. Shilimi

Deputy President, Constitutional Court



M. Musaluke

Judge, Constitutional Court



M.K Chisunka

Judge, Constitutional Court



J.Z Mulongoti

Judge, Constitutional Court

M.Z Mwandenga

Judge, Constitutional Court



M. Mapani-Kawimbe

Judge, Constitutional Court