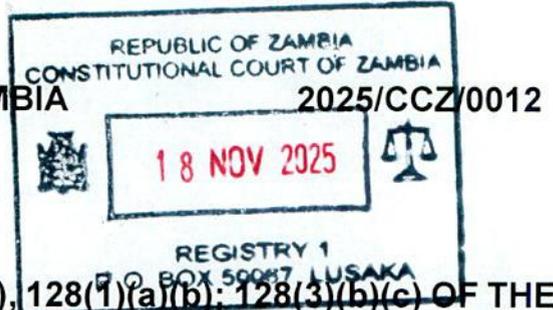


IN THE CONSTITUTIONAL COURT OF ZAMBIA
 HOLDEN AT LUSAKA
 (Constitutional Jurisdiction)



IN THE MATTER OF: ARTICLES 1, 2, 8(d), ~~128(1)(a)(b)~~: ~~128(3)(b)(c)~~ OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY ACT No. 2 OF 2016.

IN THE MATTER OF: ARTICLES 118(1), 119, 120 AND 131 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY ACT No. 2 OF 2016.

IN THE MATTER OF: THE DECISION OF THE COURT OF APPEAL IN THE CASE OF BANK OF ZAMBIA V AL SHAMS BUILDING MATERIALS COMPANY LIMITED, JAYESH SHAH AND ATTORNEY GENERAL CAZ/08/430/2023, THE DECISION TO ADJUDICATE ON A MATTER NOT RAISED ON APPEAL

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 118(1), 119, 120 AND 131 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY ACT No. 2 OF 2016

JAYESH SHAH

PETITIONER

AND

ATTORNEY GENERAL

RESPONDENT

Coram: Munalula PC, Shilimi DPC, Chisunka, Mwandenga, Kawimbe, JJC on 6th November, 2025 and on 18th November, 2025.

For the Petitioner: Mr. J. Chimankata of Messrs Cholt Practitioners, Mr. B. Mwelwa of Messrs Mwelwa, Phiri & Partners and Mr. T. Munalula of Messrs Munati Chambers

For the Respondent: Ms. C. Mulenga, Chief State Advocate, Mr. B. Zulu, Senior State Advocate – Attorney General's Chambers

JUDGMENT

Kawimbe JC, delivered the Judgment of the Court

Cases referred to:

1. John Sangwa v Attorney General, 2021/CCZ/005
2. Zambia National Commercial Bank Plc v Martin Musonda and 58 Others, CCZ Selected Judgment No. 24 of 2018
3. Charles Chihinga v New Future Financial Company Limited, 2020/CCZ/003
4. Lloyd Chembo v Attorney General, CCZ, Selected Judgment No. 15 of 2018
5. Dr. Michael Liwanga Kaingu v Sililo Mutaba, 2016/CCZ/A45, Selected Ruling No. 9 of 2018
6. Access Bank Zambia Limited v Attorney General, 2018/CCZ/009
7. Lazard Brothers & Company v Midlands Bank Limited [1993] A.C. 289
8. Charles Osen & Co. v Johnston [1942] A.C. 130
9. CFI Holdings t/a Farm City v Machaya (37 of 2023) 2023 ZWSC 29
10. Oddoye and Another v Bosco and 2 Others (J4/25/2023) (2023) GHA SC 99
11. Savenda Management Services Limited v Stanbic Zambia Limited and Gregory Chifire (Alleged Contemnor) SCZ Appeal No. 37 of 2017
12. TC Promotions Limited and 2 others v Lusaka City Council 2025/CCZ/005
13. Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia 2018/CCZ/008
14. Chick Masters Limited and Another v Investrust Bank Plc, SCZ Appeal No. 198 of 2014
15. BP Zambia Plc and Interland Motors Limited SCZ Judgment No. 5/2001

Legislation referred to:

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

Court of Appeal Act No. 7 of 2016

Constitutional Court Rules, Statutory Instrument No. 37 of 2016

Court of Appeal Rules, Statutory Instrument No. 65 of 2016

Other works referred to:

1. When can a Court's decision be ignored?, by Hon. Justice Kristen Walker, Melbourne University Law Review, Australia, 2022, Vol. 46 (2):572
2. The Black's Law Dictionary, edited by Bryan A. Garner, 10th edition, Thomson West Publishers, USA (2014)

FACTUAL BACKGROUND

- [1] The petitioner instituted this action on 23rd June, 2025 pursuant to Articles 2 and 128 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia as amended by Act No. 2 of 2016 (the Constitution). The petition was supported by an affidavit, replying affidavit, list of authorities and skeleton arguments filed on 23rd June, and 8th August, 2025, respectively.
- [2] The antecedent to this petition begins on 13th July, 2020, when Jayesh Shah, (the petitioner herein) and another, commenced a matter in the High Court against the Bank of Zambia (the 1st defendant) and the Attorney General as 2nd defendant therein, (the respondent herein). The action was styled Al Shams Building Materials Company Limited and Jayesh Shah v Bank of Zambia and Attorney General 2020/HPC/0565, in which, the plaintiffs claimed that the defendants owed them a sum of US\$139,191,386.74.
- [3] The High Court entered judgment in favour of the plaintiffs and it also granted the 1st defendant leave to appeal. The leave granted was conditional and required the 1st defendant to deposit 30% of the judgment sum into court. Dissatisfied with the judgment of the High

Court, the 1st defendant, on 11th October, 2022, filed an appeal before the Court of Appeal which disregarded the conditional order.

- [4] On 16th February, 2023, the petitioner filed a notice of motion before the Court of Appeal challenging the propriety of the 1st defendant's appeal. The Court of Appeal, on 3rd May, 2024, delivered a ruling where it determined that the conditional leave to appeal imposed by the High Court was a nullity. Further, that the 1st defendant's appeal was properly before it. That court ultimately dismissed the petitioner's notice of motion.

THE PETITIONER'S CASE

- [5] The petitioner averred that his case was instituted in public interest pursuant to Article 2 (a) and (b) of the Constitution (which entitles every person to defend the Constitution), and Article 128(1)(a) and (b) and 128(3)(b) and (c) of the Constitution (alleging constitutional breach against the decision of the Court of Appeal).
- [6] The facts of the petitioner's case are as stated in the factual background. The petitioner's main contention though is that the conditional leave to appeal ordered by the High Court against the 1st defendant is still binding. As such, the 1st defendant's appeal was incompetently lodged before the Court of Appeal. That therefore, the

Court of Appeal contravened Articles 118(1) and (2)(f) and 119 of the Constitution when it decided to entertain an appeal which was outside its jurisdiction. That the Court of Appeal further exceeded its jurisdiction under Article 131 of the Constitution by pronouncing itself on the propriety of the conditional leave to appeal, when the issue had not been raised in the 1st defendant's memorandum of appeal.

- [7] It was the petitioner's contention that the Court of Appeal contravened the principle of judicial accountability enshrined in Article 118 of the Constitution, by dismissing the subsisting conditional order of leave to appeal. Yet in its impugned ruling, the Court of Appeal recognised the law which requires litigants to obey court orders.
- [8] The petitioner also contended that the Court of Appeal contravened the principle of procedural fairness and the constitutional structure of the Judiciary guaranteed by Article 119 of the Constitution. In consequence, that by delivering a decision in the absence of a pleaded ground of appeal, the Court of Appeal acted without jurisdiction and this was subject to constitutional inquiry.
- [9] In reaction to the respondent's claim that the petition amounted to a multiplicity of actions, the petitioner averred that he had only approached this Court over the Court of Appeal's impugned actions.

The petitioner denied that there was an appeal pending before the Supreme Court because his focus was only on the Court of Appeal's breach of the Constitution. The petitioner, however, admitted that he has instituted different suits in various courts, arising from different facts and transactions over the years, but maintained that this action does not amount to a multiplicity of actions.

[10] As a result of the foregoing, the petitioner seeks the following relief:

- (i) **A declaration that Article 131 only sets out the appellate jurisdiction of the Court of Appeal and therefore by entertaining an issue which is not appealed against, the Court of Appeal breached Article 131 of the Constitution.**
- (ii) **A declaration that the petitioner is entitled to equal treatment and equality at law as set out in Article 8 (d) of the Constitution.**
- (iii) **A declaration that in terms of Article 134 the High Court Ruling dated 28 December, 2022 (which came over 2 months after the 11 October 2022 appeal) and which Ruling was not appealed against is final and binding.**
- (iv) **A declaration that when there is no appeal against an order and or finding of fact by the High Court exercising its jurisdiction under Article 134 of the Constitution such order and or finding of fact is final and binding.**
- (v) **A declaration that the Court of Appeal breached Article 118 by its failure to abide by what they themselves held that a court order must be obeyed until it has been vacated or set aside by the same court or on appeal.**
- (vi) **A declaration that the Court of Appeal breached Article 119 by its failure to consider and pronounce itself on the 28 December 2022 Ruling which was properly placed before the Court of Appeal.**
- (vii) **A declaration that the Court of Appeal breached Article 119 by holding that the Bank of Zambia had disobeyed the High Court Order**

and yet the Bank of Zambia never appealed against that order and went ahead to award costs against the Bank of Zambia.

- (viii) A declaration that the Court of Appeal breached Article 120 by disregarding its own Rules as mandated by Constitution.
- (ix) Costs of these proceedings.
- (x) Any other relief the Court may deem fit.
- (xi) Any other orders as the Court may deem fit.

THE RESPONDENT'S CASE

- [11] The respondent opposed the petition by filing an answer which was supported by an affidavit, list of authorities and skeleton arguments dated 25th July, 2025.
- [12] The respondent did not dispute the circumstances in cause no. 2020/HPC/0565 and the outcome thereof. That is, the 1st defendant lodged an appeal in the Court of Appeal against the judgment of the High Court without depositing 30% of the judgment sum. Further, that the 1st defendant's action was challenged by the petitioner who filed a notice of motion in the Court of Appeal regarding the propriety of its appeal.
- [13] According to the respondent, the notice of motion was properly heard and correctly determined by the Court of Appeal, and the motion was dismissed for being unmeritorious through a reasoned decision. That

the petitioner who was dissatisfied with the ruling of the Court of Appeal, should have lodged an appeal before the Supreme Court as provided in Article 131(2) of the Constitution, instead of mounting this petition. In consequence, the Court of Appeal did not contravene Articles 8, 131, 118(1) and (2)(f) and 119 of the Constitution because the 1st defendant was not fettered by the law to file an appeal before that Court.

- [14]** The 1st respondent went on to aver that what the petitioner was seeking to do through these proceedings was to disingenuously interfere with judicial independence by unduly challenging the Court of Appeal's power to adjudicate. That in any event, the petitioner had since taken steps to seek redress before the Supreme Court over the impugned ruling through an appeal disguised as a different matter. That, therefore this petition amounts to an abuse of court process given the number of multiple actions, which the petitioner has commenced before several courts on issues that are the subject of this petition. Further, that the petition amounts to an academic exercise because no constitutional question has been raised for this Court's determination.
- [15]** The respondent concluded by urging the Court to dismiss the petition with costs.

HEARING

- [16] At the hearing of the petition on 6th November, 2025, counsel for the parties relied on their respective affidavits, list of authorities and submissions filed herein. The petitioner produced his witness statement as part of his evidence and was not cross-examined by the respondent.
- [17] On behalf of the petitioners, Mr. Chimankata and Mr. Munalula augmented that the Court of Appeal breached Articles 131, 134, 118, 119 and 120 of the Constitution, by acting in excess of its appellate jurisdiction contrary to Article 131 of the Constitution. That the Court had no authority to nullify the order of the High Court in the absence of an appeal against that order by the respondent. In doing so, the Court of Appeal disregarded the High Court's constitutional jurisdiction under Article 134 of the Constitution and inappropriately moved itself to determine a matter for which it had no jurisdiction.
- [18] Counsel further submitted that all persons including State organs, institutions and courts were bound by court orders. As such they had a duty to obey them. In addition, courts had rules which provide clear procedure on how court orders can be vacated. In this case, however, the Court of Appeal ignored those rules and exercised authority which

it did not have. They went on to argue that it is in the interest of the public through this petition to hold public institutions such as the Court of Appeal accountable to the Constitution.

[19] In counsel's view, the petitioners case raised a very specific issue which touched on equality of the law under Article 8 of the Constitution. They argued that the Court of Appeal overlooked the principle by not applying its rules in the petitioner's case. Thus, the respondent's argument that the petitioner had engaged in abuse of court process through a multiplicity of actions had no basis because the petitioner who was crying for help in the midst of constitutional contravention by the Court of Appeal, could only approach this Court and no other court for redress. In concluding, counsel urged the Court to grant the petitioner the relief prayed for.

[20] On behalf of the respondent, Ms. Mulenga argued that the petitioner's case was wrongly before this Court. That it did not involve any constitutional violation, but was rather hypothetical, academic, speculative and an abuse of court process. Counsel asserted that the petitioner was merely unhappy with the ruling of the Court of Appeal and this did not amount to a breach of Article 118(1) of the Constitution on principles of judicial authority.

[21] Counsel contended that Article 131 of the Constitution, which the petitioner relied on for his case was misplaced because it merely sets out the jurisdiction of that court. She argued that if parties are allowed to cover dissatisfaction of court rulings or judgments under the guise of constitutional contravention, and in this petition to haul judges and the Court of Appeal into undesirable litigation, then courts would lose their independence.

[22] On Article 8 of the Constitution cited by the petitioner, counsel argued that it was non justiciable, and in consequence no substantive relief could be sought of it. Counsel prayed for costs arguing that the petitioner is guilty of abusing court process because the facts in this petition have already been litigated in various cases before different courts, and there is need for litigation to come to an end. In justifying the prayer for costs, counsel cited the case of **John Sangwa v Attorney General**¹ and concluded by urging the Court to dismiss the petitioner's case with costs.

CONSIDERATION AND DETERMINATION

[23] We have considered the petition, answer, affidavit evidence and arguments advanced by the parties.

[24] It is well to remember that the Court's jurisdiction is set out in Article 128(1) of the Constitution which reads:

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.

[25] Article 128(3) of the Constitution further provides on jurisdiction that –

128. (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.

[26] Invariably, the Court has exclusive jurisdiction to adjudicate matters involving constitutional interpretation or contravention, save for those limited by Article 28 of the Constitution.

[27] In so far as the requirement of constitutional interpretation is concerned, Article 267(1) of the Constitution provides that this should be done in accordance with the Bill of Rights and in a manner that promotes its purposes, values and principles, permits the development of the law, and contributes to good governance. We held in the case of **Zambia National Commercial Bank Plc v Martin Musonda and 58 Others²** that:

When interpreting the Constitution, all the relevant provisions bearing on the subject for interpretation should be considered together as a whole in order to effect the objective of the Constitution.

[28] We interpose here to state that in determining the issues herein, we will look at all the relevant provisions bearing on the parties' contention as a whole in order to give effect to the objectives of the Constitution.

[29] As we see it, the issues for our consideration are as follows:

(i) Whether the Court of Appeal exceeded its jurisdiction by allowing the respondent to file its appeal, and that being the question, whether this Court is the right forum for the petitioner to mount his complaint against the Court of Appeal's alleged jurisdictional error?

(ii) Whether this petition amounts to an abuse of court process and a multiplicity of actions?

[30] Given the issues herein, we begin by presenting an overview of the constitutional framework and jurisdiction of the superior courts in Zambia.

[31] The judicial arm in our country, just like the other two arms of Government, namely the executive and legislature is founded on the principles of constitutional supremacy entrenched in Article 1 of the Constitution. Article 1(3) of the Constitution further provides that all persons in Zambia, State organs and State institutions are bound by the Constitution. In a constitutional democracy such as ours, substantial power is given to courts to uphold the Constitution. In this regard, Article 119 of the Constitution vests judicial authority and performance of judicial function in the Judiciary as follows:

119. (1) Judicial authority vests in the courts and shall be exercised by the courts in accordance with this Constitution and other laws.

(2) The courts shall perform the following judicial functions:

(a) hear civil and criminal matters; and

(b) hear matters relating to, and in respect of, this Constitution.

- (3) Except as otherwise provided in this Constitution, other law or as ordered by a court, the proceedings of a court shall be in public.

[32] Article 118 of the Constitution outlines the principles of judicial authority as follows:

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

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

- (a) justice shall be done to all, without discrimination;
- (b) justice shall not be delayed;
- (c) adequate compensation shall be awarded, where payable;
- (d) alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3);
- (e) justice shall be administered without undue regard to procedural technicalities; and
- (f) the values and principles of this Constitution shall be protected and promoted.

[33] In exercising judicial authority, courts are further bound by Articles 8 and 9(1) of the Constitution on national values and principles which provide that:

8. The national values and principles are —

- (a) morality and ethics;
- (b) patriotism and national unity;
- (c) democracy and constitutionalism;

- (d) human dignity, equity, social justice, equality and non discrimination;
- (e) good governance and integrity; and
- (f) sustainable development.

9. (1) The national values and principles shall apply to the —
- (a) interpretation of this Constitution;
 - (b) enactment and interpretation of the law; and
 - (c) development and implementation of State policy.

[34] On national values and principles in constitutional interpretation, we stated in the case of **Charles Chihinga v New Future Financial Company Limited**³ that:

A plain reading of Article 9 of the Constitution shows that the values and principles are to be applied in the interpretation of the Constitution, the enactment and interpretation of laws and they also act as a guide to developing and implementing State policy. The national values and principles are not only symbolic but also influence the aspirations of society in the interpretation and application of the law and are meant to guide public officers and policy makers.

It follows that the national values and principles as provided for under Article 8 of the Constitution must be taken into account when this Court is interpreting the Constitution. In fact, the Constitution itself has reinforced this theory of interpretation of the Constitution by providing under Article 267 (1) ...

It is therefore our considered view that when a matter is brought before us for determination, we are obligated to take into account the national values and principles when interpreting the Constitution.

[35] Article 120(1) of the Constitution provides for the system of courts in the country as follows:

120. (1) The Judiciary shall consist of the superior courts and the following courts:

- (a) subordinate courts;
- (b) small claims courts;
- (c) local courts; and
- (d) courts, as prescribed.

[36] The Supreme Court and the Constitutional Court rank as the apex courts according to Article 121 of the Constitution. The rest of the courts are subordinate to these courts through different pathways.

[37] Article 122(1) of the Constitution provides for the functional independence of the Judiciary, thus:

122. (1) In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.

[38] The establishment, composition and jurisdiction of the superior courts is provided for in Articles 124 to 139 of the Constitution. Article 125 of the Constitution describes the jurisdiction of the Supreme Court in this manner:

125. (1) Subject to Article 128, the Supreme Court is the final court of appeal.

(2) The Supreme Court has -

- (a) appellate jurisdiction to hear appeals from the Court of Appeal; and
- (b) jurisdiction conferred on it by other laws.

(3) The Supreme Court is bound by its decisions, except in the interest of justice and development of jurisprudence.

[39] As already outlined in this judgment at paragraphs 24 and 25, the jurisdiction of the Constitutional Court is limited to matters spelt out in Article 128 of the Constitution only.

[40] Article 131 of the Constitution provides for the jurisdiction of the Court of Appeal as follows:

131. (1) The Court of Appeal has jurisdiction to hear appeals from —
- (a) the High Court;
 - (b) other courts, except for matters under the exclusive jurisdiction of the Constitutional Court; and
 - (c) quasi-judicial bodies, except a local government elections tribunal.
- (2) An appeal from a decision of the Court of Appeal shall be made to the Supreme Court with leave of the Court of Appeal.

[41] The constitutional provisions outlined above, delineate the parameters on vesting of judicial authority in the Judiciary, principles of judicial authority, national values and principles and their application to constitutional interpretation, the structure and system of the superior courts, as well as their jurisdiction. It must be underscored that courts are not only bound by the law, but also owe a duty of fidelity to it.

[42] To this extent, courts are expected to perform their judicial function only in accordance with the law. Further, to apply the law impartially and without subjecting themselves to the control or direction of a person or an authority. Courts must also ensure that they promote substantial and procedural justice so that parties' who appear before them are treated equally and fairly.

[43] The division in the system of the courts seeks to recognise that different courts have different responsibilities and power to adjudicate matters only within their jurisdiction. Courts should never usurp or undermine the functions and responsibilities of the other because this is the only way that harmonious adjudication can be promoted. This is a position we stated in the case of **Lloyd Chembo v Attorney General**⁴ that:

There is comity between the courts constituting the Judiciary. The 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.

[44] With these legal principles in mind, we will address the petitioner's allegation that the Court of Appeal exceeded its jurisdiction as provided in Article 131 of the Constitution in allowing the assailed appeal. The

allegation appears in relief (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) sought in the petition.

[45] The petitioner argued that the Court of Appeal violated Article 131 of the Constitution when it considered a ground that was not presented by the respondent (1st defendant) in its appeal. For the assertion, the petitioner cited the case of **Dr. Michael Liwanga Kaingu v Sililo Mutaba**⁵ which states the principle that –

The Court will not exercise discretion in favour of an appellant that sits on a right to appeal by not abiding by the rules of Court and by not acting properly to cure a defect.

[46] The petitioner also cited the case of **Access Bank Zambia Limited v Attorney General**⁶ to the extent where it was stated that court rules are an integral part of the administration of justice and should be followed. According to the petitioner, the Court of Appeal by interfering with the conditional leave to appeal imposed on the 1st defendant by the High Court, overstepped its lawful limit. It also adjudicated on an issue which was not canvassed in the appeal. That in the normal course of events, the Court of Appeal should have only dealt with issues that were raised in the memorandum of appeal and not extraneous matters.

[47] To justify the argument, the petitioner cited the cases of **Lazard Brothers & Company v Midlands Bank Limited**⁷, **Charles Osen & Co. v Johnston**⁸ and **CFI Holdings t/a Farm City v Machaya**⁹ all speaking to the principle of judicial discretion and how it should be exercised.

[48] The petitioner went on to argue that rules of court are binding on parties, and as such, should be respected. Consequently, Order X rule 9 (2) of the **Court of Appeal Rules, Statutory Instrument No. 65 of 2016** (CAR), which requires a party to set out the grounds of objection to the judgment appealed against in a memorandum of appeal, could not be overlooked. In addition, Order X rule 9(4) of the CAR was cited as instructive that:

The Court shall not allow an appeal on any ground not stated in the memorandum of appeal unless the respondent, including any person who in relation to such ground should have been made a respondent, has had sufficient opportunity of contesting the appeal on that ground.

[49] The petitioner also made reference to the law that an appellate court will not interfere with findings of fact or law, if that finding has not been appealed against. To persuade us, the case of **Oddoye and Another v Bosco and 2 Others**¹⁰ was called in aid, where the Supreme Court of Ghana held that:

An appeal is a creature of the Constitution and/or statute and the Court of Appeal had no inherent jurisdiction to hear an appeal from a person affected by an adverse judgment if such a person failed to exercise her statutory right of appealing and doing so in a manner laid down by the law. A person or party who seeks to invoke the appellate jurisdiction of the Court must strictly comply with the conditions set out...

A right of appeal is always conferred by statute and when the statute conferring the right lays down the conditions precedent to the vesting of that right in a litigant; it is essential that those conditions must be strictly performed, otherwise the right does not become vested.

[50] From the petitioner's position, the Court of Appeal breached Article 119 of the Constitution by setting aside the High Court conditional order of leave to appeal. That this action was not permissible under the Constitution and the rules of that court. In any event, the 1st defendant had already accepted the decision of the High Court and for all intents and purposes, was deemed to be satisfied with it. Hence, the issue should not have been revived by the Court of Appeal because it was not properly placed before it. As a result, that court was not at liberty to substitute its own exercise of discretion with that of the High Court.

[51] In substantiation of the argument, the petitioner cited the case of **Savenda Management Services Limited v Stanbic Zambia Limited and Gregory Chifire (Alleged Contemnor)**¹¹ where the Supreme Court held –

That just manner connotes that persons appearing before court shall be given an opportunity to present their cases, treated equally and to understand the case against them. That the word accountability curtails judges' functions by requiring them to be transparent in the justice delivery system and explaining to parties why one has lost and the other succeeded.

- [52] The petitioner went on to allege that the respondent (1st defendant), who he described as a privileged litigant was given better treatment than him in court. Further, that the Court of Appeal ruling which encouraged the 1st defendant's impunity set a dangerous precedent of disobeying court orders contrary to the rule of law and judicial accountability.
- [53] The respondent did not share the petitioner's view and argued that the Court of Appeal did not violate Article 131 of the Constitution because it heard the petitioner's preliminary objection. That the Court of Appeal delivered a ruling which was correct at law and by determining that the 1st defendant was entitled to lodge its appeal, that Court ensured that its right and access to justice was not fettered. It was contended that since there is no provision in the **Court of Appeal Act No. 7 of 2016** (CAA) that permits lower courts to impose any conditions on litigants when lodging appeals before that court, no constitutional breach could be attached to the Court of Appeal.

- [54] That all the petitioner was trying to do in the present action was to haul the Court of Appeal into unnecessary litigation when it had exercised its judicial power correctly, and within the limits of the law. As far as the respondent was concerned, the Court of Appeal did not undermine the rule of law. It was also accountable for its actions because it rendered a reasoned ruling after hearing the petitioner's notice of motion.
- [55] We have considered the parties' arguments and find it necessary to firstly define what constitutes appellate jurisdiction. We infer from Articles 125, 128 and 131 of the Constitution (that is, the jurisdiction of the Supreme Court, Constitutional Court and Court of Appeal, respectively, already discussed), that appellate jurisdiction refers to the power an appellate court has to hear appeals from lower courts. This includes the power to uphold, reverse or modify decisions of lower courts.
- [56] Appellate jurisdiction, in our country, principally exists in civil and criminal courts. This Court, on the other hand, exercises appellate jurisdiction only in local government and parliamentary election appeals. For an appellate court to hear a case, a party must typically file an appeal in which the decision of a lower court is contested. The right to appeal is readily available to litigants and is

regulated by rules specific to various courts, however, bearing in mind that justice should be administered without undue regard to procedural technicalities (Article 118(2)(e) of the Constitution).

[57] The law in Zambia does not specify when an appellate court can be said to have exceeded its jurisdiction. Inspiration though, can be drawn from various legal writings. For instance, the Hon. Justice Kirsten Walker in her article **When can a Court's decision be ignored?**, **Melbourne University Law Review, Australia, 2022, Vol. 46 (2):572** at page 581 states that:

Jurisdictional error is at its most obvious where the inferior court purports to act wholly or partly outside its jurisdiction in the sense of entertaining a matter or making a decision or order of a kind which wholly or partly lies outside the limits of its functions and powers.

[58] In essence, jurisdictional error which can be described as a legal mistake, occurs where a court exceeds its legal authority, rendering its decision invalid. Such error can be challenged.

[59] What we see from the facts before us is that, what the petitioner is in essence challenging is the impugned decision of the Court of Appeal. Additionally, he views the Court of Appeal's action as having fallen into jurisdictional error, which is both procedural and substantive in its decision to nullify the High Court's conditional order of leave to appeal.

[60] The **Black's Law Dictionary, 10th edition**, defines the concepts of procedural and substantive law as follows:

Procedural law

The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves.

Substantive law

The part of the law that creates, defines, and regulates the rights, duties, and powers of parties.

[61] Stated differently, procedural law defines the channel through which a party can obtain specific rights or duties for themselves. That is to say, through the rules that govern the process of a legal proceeding so as to ensure that courts adjudicate disputes fairly. Substantive law, on the other hand, is the body of law which defines and regulates specific rights, duties and powers of parties.

[62] After considering the parties positions, we find broadly that the relief sought by the petitioner at (i) – (viii) of his petition concerns allegations which can be described as either being of procedural or substantive law against the Court of Appeal. We, however, observe that:

- (a) the allegation in relief (i) which refers to Article 131 of the Constitution is predicated on an incomplete understanding that

the clause is merely jurisdictional and cannot be adjudicated in isolation of justiciable constitutional provisions.

(b) the averment in relief (ii) disregards the fact that Article 8(d) of the Constitution, which lies in national values is not justiciable and it requires pleading of other constitutional provisions to make it justiciable.

(c) the allegations in relief (iii), (iv), (v), (vi), (vii) and (viii) that the Court of Appeal had no jurisdiction to overturn the High Court's conditional order of appeal are substantive claims.

[63] According to Article 128(1) of the Constitution, this Court only has jurisdiction to hear matters involving constitutional interpretation or contravention. This jurisdiction does not extend to matters outside the Constitution such as civil or criminal cases.

[64] As it turns out on the facts before us, it is clear that the Court of Appeal was moved by the petitioner to hear his notice of motion on the 1st defendant's impugned appeal. From what is seen on the record, and without delving into the contents, the Court of Appeal rendered a decision which the petitioner is displeased with. This position is confirmed by the averments in petitioner's witness statement and affidavit evidence.

[65] The arguments forcefully presented by his counsel that the Court of Appeal had no authority to determine that the High Court's conditional order of appeal amounted to a nullity, are substantive arguments of the law. We are not therefore persuaded that the petitioner's dissatisfaction with a court ruling should be elevated to any constitutional discourse because it fits into the description of jurisdictional error which can appropriately be resolved by way of an appeal to the Supreme Court.

[66] We recently stated in the case of **TC Promotions & 2 Others v Lusaka City Council**¹² that a constitutional question is one that only arises in the context of Article 128(1) of the Constitution. These questions will arise, relevantly under these classifications as: matters involving constitutional violation or contravention, or in disputes involving election appeals of Members of Parliament and councillors. We further stated of constitutional questions that

... what can be said 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 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.

(emphasis our own)

- [67] Our assessment of the petitioner's evidence as contained in his witness statement, which is no different from his petition, affidavit evidence and arguments presented in support of his case solidifies the position that the justice he seeks is an appeal against the ruling of the Court of Appeal and not a constitutional contravention to be presented before this Court. The history of cases that he has litigated in other courts has not been useful in establishing a constitutional question and in our view, this should have been presented in an appeal to the Supreme Court.
- [68] We take this opportunity to state that litigants who are dissatisfied with portions of a judgment or ruling of any court are not at liberty to turn such grievance into constitutional questions. This would bring chaos to the operations of courts because judges or courts should not be fettered in exercising their judicial authority vested in them in Articles 118 and 119 of the Constitution as the petitioner is trying to do by unduly questioning the power of the Court of Appeal to adjudicate.
- [69] In the circumstances, we are unable to find that the Court of Appeal breached Articles 8, 118, 119, 120, 131 and 134 of the Constitution as

alleged by the petitioner. The question whether the rules of court were respected by that court and whether the High Court's order was validly nullified or not by the Court of Appeal are substantive and procedural issues that can be raised on appeal. These issues, we must emphasise, do not raise any constitutional questions.

[70] We, unequivocally state that the petitioner's recourse lies in an appeal to the Supreme Court as provided in Article 131(2) of the Constitution, that a person who is dissatisfied with a decision of the Court of Appeal must file an appeal before that Court. This Court's appellate jurisdiction for the avoidance of doubt, is only limited to appeals arising from the High Court or Local Government Election Tribunals in election petition cases and does not include civil (including commercial) and criminal matters.

[71] We would not want to bring chaos to the system of our courts by arrogating ourselves power that belongs to the Supreme Court by attempting to scrutinize, uphold or reverse the decision of the Court of Appeal. The petitioner's case which is a 'veiled appeal' and patently lying in commercial law is, therefore, wrongly before this Court. In consequence, the relief sought in (ix), (x) and (xi) of the petition has no limb to stand on.

[72] The final question we shall deal with is whether the petition amounts to multiplicity of actions and an abuse of court process?

[73] The contention was raised by the respondent who averred that the petitioner's case amounted to a multiplicity of actions, an abuse of court process and a mere academic exercise. That what the petitioner ought to have done was to lodge an appeal against the decision of the Court of Appeal before the Supreme Court.

[74] To enliven the contention, the respondent alleged that the petitioner has instituted several cases in different courts against the State. That the petition presently before us confirms how the petitioner has been engaging in punitive litigation against the respondent. To substantiate the contention, the respondent cited the case of **Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia**¹³ where we held that:

It is trite that courts should not entertain matters which are premature. The principle is well founded and necessary to ensure that a Court's resources are applied to issues that are ripe for hearing.

[75] Further, called in aid of the respondent's contention was the case of **Chick Masters Limited and Another v Investrust Bank Plc**,¹⁴ where the Supreme Court stated that abuse of court process can arise where the claim is vexatious, scurrilous or obviously ill-founded such as

where proceedings are stated to purpose a claim which has already been dealt with by way of full and final settlement between the parties.

[76] It was argued that since the petitioner had exhausted the process in the Court of Appeal, that court was *functus officio*. Further, that the petitioner on his own inaction failed to exercise his right to appeal against the decision of the Court of Appeal when that remedy was readily available. That instead, he decided to commence a fresh action before this Court when he clearly had no constitutional issue to raise.

[77] In response, the petitioner argued that his case did not amount to an abuse of court process because the issue before this Court relates to a violation of the Constitution. In any case, all the other suits instituted by him in other courts were averred to be founded on different facts and or transactions, and had no bearing on the action before us.

[78] We have considered the contested positions. There are a number of authorities explaining the principle of abuse of court process and how multiplicity of actions is one of the factors in which the abuse manifests. One of the leading authorities is the seminal case of **BP Zambia Plc and Interland Motors Limited**¹⁵, where the Supreme Court stated that:

For our part, we are satisfied that, as a general rule, it will be regarded as abuse of process if the same parties relitigate the same subject matter from one action to another or from judge to judge... In conformity with the court's inherent power to prevent abuse of its process, a party in dispute with another over a particular subject should not be allowed to deploy his grievance piecemeal in scattered litigation and keep on hauling the same opponent over the same matter before various courts. The administration of justice would be brought into disrepute if a party managed to get conflicting decisions, or decisions which undermine each other from two or more judges over the same subject matter.

[79] Multiplicity of actions, put differently, refers to the improper commencement of suits by a petitioner against the same respondent on the same facts or transaction in order to obtain particular relief. It is considered to be an abuse of court process because it engages the use of piecemeal litigation. It also has the potential of unsettling the court system because there is a risk that courts may issue conflicting rulings or judgments on the same subject matter. Ultimately, this can lead to courts embarrassing themselves because the filing of multiple actions on the same facts or transaction and the rendering of conflicting decisions has the effect of undermining the administration of justice.

[80] We are satisfied from the assessment of the facts before us that the petitioner has engaged in abuse of court through a multiplicity of actions. The petition before us raises no constitutional question and

clearly the petitioner is merely disgruntled with the decision of the Court of Appeal. He should have approached the Supreme Court and not this Court because it is not the correct forum to resolve his matter, which is rooted in commercial law only and not the Constitution.

FINAL ORDERS

- [81] We hold that the petition has no merit and hereby dismiss it.
- [82] We further hold that the petitioner is blameworthy of abuse of court process and has engaged in a multiplicity of actions.
- [83] He is condemned to bear the costs for these proceedings.



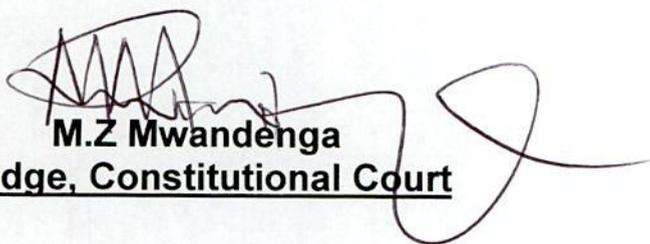
M. M Munalula (JSD)
President – Constitutional Court



A. M Shilimi
Deputy President - Constitutional Court



M. K Chisunka
Judge, Constitutional Court



M.Z Mwandenga
Judge, Constitutional Court



M. Mapani-Kawimbe
Judge, Constitutional Court