

IN THE CONSTITUTIONAL COURT  
HOLDEN AT LUSAKA  
(Constitutional Jurisdiction)

2025/CCZ/0031

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA CHAPTER  
1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: DECLARATION OF THE CHAWAMA  
PARLIAMENTARY SEAT VACANT

IN THE MATTER OF: CONTRAVENTION OF ARTICLE 72(2)(C) OF  
THE CONSTITUTION AS AMENDED BY ACT  
NO. 2 OF 2016

IN THE MATTER OF: ARTICLES 1, 2 AND 128 OF THE  
CONSTITUTION AS AMENDED BY ACT NO.  
2 OF 2016

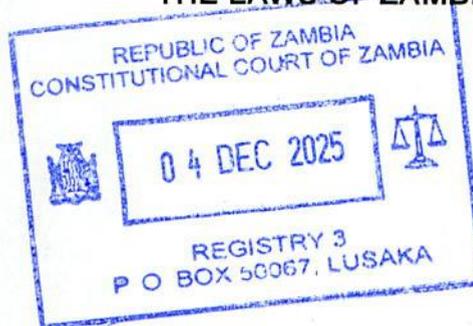
IN THE MATTER OF: THE PARLIAMENTARY AND MINISTERIAL  
CODE OF CONDUCT ACT CHAPTER 16 OF  
THE LAWS OF ZAMBIA

BETWEEN:

TRESFORD CHALI

AND

ATTORNEY GENERAL



PETITIONER

RESPONDENT

Before the Hon. Mr. Justice M. Musaluke on the 4<sup>th</sup> December, 2025

Appearances:

*For the Petition:*

*Mr. T. Chali (In- Person)*

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**RULING**

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**Cases referred to:**

1. *William Harrington vs. Dora Siliya SCZ Judgment No. 14 of 2011;*
2. *Joshua Ndipyola Banda vs. The Attorney General 2022/CCZ/0010*
3. *Sonny Paul Mulenga and Others v Investrust Merchant Bank Limited(1991)ZR 101*
4. *Isaac Mwanza (suing in his capacity as a member and in the interest of civil liberties union) vs. National Assembly of Zambia, Attorney General and the Electoral Commission of Zambia 2024/CCZ/0022*
5. *Turnkey Properties Limited v Lusaka West Development Company Limited (1984) ZR 85*

**Legislation referred to:**

*Constitution of Zambia as amended by Act No. 2 of 2016*

*Parliamentary and Ministerial Code of Conduct Chapter 16 of the Laws of Zambia*

*Constitutional Rules SI No. 37 of 2016*

**[1] Introduction**

[1.1] The Petitioner herein seeks an order to stay the ruling by the Honourable Speaker of the National Assembly dated 28<sup>th</sup> November, 2025 in which she declared the Chawama Parliamentary Seat held by Honourable Tasila Lungu, MP, vacant. The application was made by summons dated 1<sup>st</sup> December, 2025, pursuant to Order IX Rule 20 and Order X Rule 2 of the Constitutional Court Rules SI No. 37 of 2016 (CCR).

[1.2] At the very outset, I wish to state that I have declined to grant the Order for Stay on the basis that the application by the Petitioner is flawed. I shall give the reasons for my decision later in this Ruling.

## **[2] Background**

[2.1] The background to this application is that in July 2025, the Honourable Speaker of the National Assembly had directed Hon. Tasila Lungu (MP) Member of Parliament for Chawama Constituency to present herself and to attend the business of the house within fourteen (14) days of the opening of the 5<sup>th</sup> session of the 13<sup>th</sup> National Assembly. Despite the said directive, Honourable Tasila Lungu, MP has to date not reported to Parliament.

[2.2] Following the continued absence from Parliament by Honourable Tasila Lungu (MP), on 28<sup>th</sup> November, 2025, the Honourable Speaker of the National Assembly delivered a ruling in which she declared the Chawama Parliamentary Seat held by Honourable Tasila Lungu, MP, vacant.

[2.3] The ruling by the Honourable Speaker of the National Assembly to declare the Chawama Constituency seat vacant, prompted the Petitioner herein to lodge a Petition before this Court on 1<sup>st</sup> December,

2025. By this Petition, the Petition has challenged the decision of the Honourable Speaker's ruling to declare the Chawama Parliamentary seat vacant on the basis that it violates the provisions of Article 72(2)(c) of the Constitution as amended (the Constitution)

### **[3] Petitioner's Application**

#### **Affidavit Evidence and Arguments**

[3.1] The application for stay is supported by an affidavit in support and skeleton arguments. The affidavit in support was deposed by the Petitioner.

[3.2] The Petitioner averred that on 28<sup>th</sup> November, 2025 the Honourable Speaker of the National Assembly delivered a ruling in which she declared the Chawama Parliamentary Seat held by Hon. Tasila Lungu, MP, vacant.

[3.3] That the said ruling has not been made public but was broadcasted live vide video on the face book page called '**the National Assembly**' and was inscribed on the video **Parliament TV** and that the Honourable Speaker ruled as follows:

*“...Miss T. Lungu, MP is in breach of the prescribed code of conduct being standing order 215 and 243 of the National Assembly of Zambia Standing Orders 2024...”*

- [3.4] In the skeleton arguments in support of the application, the Petitioner argued in the main that that the Constitution under Article 72(2)(c) provides for instances when a Member of Parliament shall vacate the seat and it was argued that the one of the instances provided for under Article 72(2) (c) of the Constitution is where a Member of Parliament acts contrary to the Prescribed code of conduct.
- [3.5] The Petitioner further argued that the code of conduct for Parliamentarians is contained in the Parliamentary and Ministerial Code of Conduct Chapter 16 of the Laws of Zambia and not in the Standing Orders 2024. However, that in her ruling, the Honourable Speaker referred to the Standing Orders 2024.
- [3.6] In buttressing the above point, it was argued that Standing Orders are not in themselves the Code of Conduct as Article 72(2)(c) of the Constitution refers to a prescribed code of conduct. I was referred to Article 266 of the Constitution for the meaning of the term **‘prescribed’** which has been defined to mean *“as provided for in an Act of Parliament”*.

[3.7] Consequently, that the Parliamentary Code of Conduct is provided in an Act of Parliament while the Standing Orders are not provided for in an Act of Parliament but are merely a set of rules that govern proceedings and conduct of Parliament

[3.8] Lastly, the Petitioner argued that the Honourable Speaker in her ruling failed to show which provision of the Parliamentary and Ministerial Code of Conduct Act Hon. Tasila Lungu acted contrary to. According to the Petitioner, the Hon. Speaker's jurisdiction was confined to investigate Hon. Tasila Lungu's breach of the Parliamentary and Ministerial Code of Conduct Act and not to investigate Honourable Tasila Lungu's breach of the Standing Orders. To support this assertion, the Petitioner relied on the case of **William Harrington vs. Dora Siliya**<sup>1</sup>.

#### **[4] The Hearing**

[4.1] I heard the Application Ex-Parte and the Petitioner urged me to grant the stay based on the argument I have highlighted in the preceding paragraphs.

## [5] Determination

- [5.1] I have considered the application for an order to stay the ruling of the Honourable Speaker of the National Assembly dated 28<sup>th</sup> November, 2025, together with the supporting affidavit evidence and the submissions advanced by the Petitioner.
- [5.2] The issue for determination is whether this is an appropriate case in which I should exercise my discretion to grant the Petitioner an order staying the ruling of the Honourable Speaker dated 28<sup>th</sup> November, 2025.
- [5.3] It is trite law that the decision to grant or refuse a stay of execution is discretionary. A stay will only be granted where the special circumstances of the case justify such intervention.
- [5.4] The principles governing the grant of a stay were discussed in ***Joshua Ndipyola Banda v The Attorney General***<sup>2</sup>, where this Court relied on the Supreme Court decision in ***Sonny Paul Mulenga and Others v Investrust Merchant Bank Limited***<sup>3</sup>.
- [5.5] The question, therefore, is whether the Petitioner has advanced special and convincing grounds warranting the grant of an order

staying the Honourable Speaker's decision of 28th November 2025. From the affidavit evidence and arguments, the Petitioner relies on two principal grounds:

- i. *That contrary to Article 72(2)(c) of the Constitution), the Honourable Speaker declared the Chawama Constituency seat vacant by invoking Standing Orders 2024 instead of the Parliamentary and Ministerial Code of Conduct, thereby creating a new constitutional basis for vacancy of a parliamentary seat;*
- ii. *That Constitutional Bill No. 7 is scheduled to be tabled before Parliament this Friday, and unless a stay is granted, the people of Chawama will be deprived of representation in the constitutional amendment process because their Member of Parliament will not be permitted to vote owing to the declaration of her seat as vacant.*

[5.6] With respect to the first ground, my considered view is that the question of whether the Honourable Speaker acted outside Article 72(2)(c) of the Constitution by invoking Standing Orders 2024 rather than the Parliamentary and Ministerial Code of Conduct is not a matter that can be addressed at this preliminary stage. Determining that issue would require delving into the merits of the petition—a task which lies beyond

the jurisdiction of a single Judge hearing an interlocutory application. This ground therefore, cannot form the basis for granting a stay. My position is fortified by the case of ***Isaac Mwanza (suing in his capacity as a member and in the interest of Civil Liberties Union) v National Assembly of Zambia, Attorney General and the Electoral Commission of Zambia***<sup>4</sup>, where this Court endorsed the principle in the Supreme Court case of ***Turnkey Properties Limited v Lusaka West Development Company Limited and Others***<sup>5</sup>, that a court hearing an interlocutory application must refrain from making comments that may pre-empt issues to be determined on the merits at the substantive hearing.

[5.7] Regarding the second ground, it is my considered view that the Petitioner's apprehension is speculative and unfounded. This Court takes judicial notice of the fact that Honourable Tasila Lungu has been absent from Parliament since June, 2025. This was confirmed by the Petitioner, who deposed that Hon. Lungu had not reported to Parliament to date. This means that the people of Chawama have not been represented, nor have they participated in parliamentary business, since June, 2025.

[5.8] The Petitioner has not adduced any evidence demonstrating that Hon. Tasila Lungu who has been absent since June, 2025 will be available at the time when Constitutional Bill No. 7 is expected to be tabled before Parliament. In the absence of tangible evidence, the argument that refusal of a stay deprives the people of Chawama of participation in the debate on the Bill is speculative and unfounded.

## **[6] Conclusion**

[6.1] Having considered the grounds upon which the stay is sought, it is my considered view that this is not an appropriate case in which to exercise my discretion to grant a stay. The application is therefore refused.

[6.2] I make no order as to costs.

Dated at Lusaka the 4<sup>th</sup> day of December, 2025



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**JUDGE M. MUSALUKE**  
**CONSTITUTIONAL COURT JUDGE**