

**IN THE CONSTITUTIONAL COURT OF ZAMBIA  
HOLDEN AT LUSAKA**

**2025/CCZ/007**

**(CONSTITUTIONAL JURISDICTION)**

IN THE MATTER OF: ARTICLES 1, 2, 43(2)(a), 128(1)(a) and 128(3)(b)  
OF THE CONSTITUTION OF ZAMBIA.

IN THE MATTER OF: ARTICLES 8(c)(d)(e), 9(1)(a), 56(1), 52(4), 100,  
106(1)(3)(6), 120, 267(1) and 267(3)(b)(c) OF THE  
CONSTITUTION OF ZAMBIA AS READ  
TOGETHER WITH SECTIONS 2, 7 AND 11 OF THE  
CONSTITUTION OF ZAMBIA ACT 2016

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE 52(4)  
AS READ TOGETHER WITH ARTICLES 100 AND  
106 OF THE CONSTITUTION OF ZAMBIA BY THE  
CONSTITUTIONAL COURT IN DETERMINING  
THE ELIGIBILITY OF SIXTH PRESIDENT OF THE  
REPUBLIC OF ZAMBIA, DR. EDGAR CHAGWA  
LUNGU TO CONTEST FUTURE ELECTIONS.

IN THE MATTER OF: INTERPRETATION OF WHETHER IN TERMS OF  
ARTICLE 267(3)(b)(c) AS READ TOGETHER WITH  
ARTICLE 106(1)(3)(6), A REFERENCE TO A  
PERSON ELECTED TO THE OFFICE OF  
PRESIDENT WAS REFERENCE TO DR. EDGAR  
CHAGWA LUNGU, A PERSON WHO WAS  
HOLDING THE OFFICE OF PRESIDENT AT THAT  
PARTICULAR TIME AND PROVISIONS OF  
ARTICLE 106(1)(3)(6) WERE TO BE READ WITH  
THE MODIFICATION NECESSARY TO MAKE  
THEM APPLICABLE IN THE CIRCUMSTANCES.

IN THE MATTER OF: THE PER INCURIAM DECISION OF THE COURT  
DATED 10<sup>TH</sup> DECEMBER 2024 AND THE  
UNFETTERED INHERENT JURISDICTION OF  
THE CONSTITUTIONAL COURT OF ZAMBIA.



**BETWEEN**

**SEAN TEMBO** (Suing in his capacity as Spokesperson  
of the Tonse Alliance)

**PETITIONER**

**AND**

**ATTORNEY GENERAL**

**RESPONDENT**

**CORAM:** Shilimi - DPC, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe and  
Mulife JJC on 5<sup>th</sup> November, 2025 and 27<sup>th</sup> November, 2025

**For the Petitioner:** In Person

**For the Respondent:** Mr. M. Muchende, SC, Solicitor General, Ms C.  
Mulenga, Acting Chief State Advocate, Mr. C.  
Mulonda, Deputy Chief State Advocate, Mr. B. Zulu,  
Senior State Advocate and Mr. P. K. Banda, State  
Advocate

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**JUDGMENT**

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**Shilimi - DPC**, delivered the Judgment of the Court

**Cases referred to:**

1. Michelo Chizombe v Edgar Chagwa Lungu and 2 Others, 2023/CCZ/0021
2. Daniel Pule and 3 Others v Attorney General, 2017/CCZ/004
3. Bampi Kapalasa and Joseph Busenga v Attorney General, 2021/CCZ/0011/14
4. Legal Resources Foundation Limited and 2 Others v Edgar Chagwa Lungu and Attorney General, CCZ Selected Judgment No. 27 of 2021
5. Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia, 2018/CCZ/005
6. Bizwayo Nkunika v Lawrence Nyirenda and Electoral Commission of Zambia, 2019/CCZ/005
7. Harja Import and Export Limited v Zambia Revenue Authority, SCZ Appeal no. 48 of 1998
8. Afritech Asset Management Company Limited and CPD Properties Limited v The Gynae and Antenatal Clinic and Kenneth Muuka, SCZ Selected Judgment No. 11 of 2019
9. Michael Mbuyu Mutwena v Attorney General, 2022/CCZ/0038
10. John Sangwa v Attorney General, 2022/CCZ/012
11. Chishimba Kambwili v Attorney General, 2019/CCZ/009

12. Communication Authority v Vodacom Zambia Limited, (2009) ZR 196
13. Godfrey Malembeka (Suing as Executive Director of Prisons Care and Counselling Association) v The Attorney General and Electoral Commission of Zambia, 2016/CCZ/0013
14. Mutembo Nchito v The Attorney General, 2016/CCZ/009

**Legislation referred to:**

The Constitution of Zambia Act No. 1 of 2016

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

The Constitution of Zambia Act, 1991 as amended by the Constitution of Zambia (Amendment) Act No. 18 of 1996

**Others works referred to:**

Francis Bennion, Statutory Interpretation, 2<sup>nd</sup> Edition, (1992) Butterworths, London, UK.

**1.0 Introduction**

1.1 The Petitioner, in his capacity as spokesperson of a political entity called Tonse Alliance, filed a Petition on 25<sup>th</sup> March, 2025 against the Attorney General alleging constitutional contravention by this Court, of Article 52(4) as read with Article 100 and 106 of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of the 2016 (The Constitution). He took issue with the manner in which we adjudicated upon the case of **Michelo Chizombe v Edgar Chagwa Lungu and 2 Others**<sup>1</sup>. He argued that our decision not only determined the issue of Mr. Edgar Chagwa Lungu's eligibility to participate in future elections

prematurely as nominations had not been filed but was also made *per incuriam* because we did not consider Article 267(3)(b) and (c) of the Constitution in an assessment of this Court's past decisions on Mr. Edgar Chagwa Lungu's eligibility, namely, **Daniel Pule and Others v Attorney General**<sup>2</sup>, **Bampi Kapalasa and Joseph Busenga v Attorney General**<sup>3</sup> and **Legal Resources Foundation Limited and 2 Others v Edgar Chagwa Lungu and Attorney General**<sup>4</sup>

1.2 The Petitioner also poses a question inviting us to interpret Article 267(3)(b) and (c) of the Constitution in so far as it relates to the applicability of Article 106(1), (3) and (6) of the Constitution to the tenure of office of then President, Mr. Edgar Chagwa Lungu, his term of office and his eligibility to contest presidential elections in 2021.

1.3 Flowing from the foregoing, the Petitioner is seeking the following remedies:

- (i) A declaration and order that the determination by the Constitutional Court on 10<sup>th</sup> December, 2024 regarding the eligibility of the sixth Republican President, Dr. Edgar Chagwa Lungu, to contest future elections prior to the formal submission of his nomination, contravenes Article 52(4) as read with Article 100 of the Constitution;
- (ii) An interpretation on whether, in terms of Article 267(3)(b) and 267(3)(c), read together with Article 106(1)(3) and 106(1)(6) of the Constitution of Zambia, the reference to a "person elected to the office of President" includes Dr. Edgar Chagwa Lungu, who was

the incumbent President at the material time and Article 106(1)(3) and 106(1)(6), when interpreted with the necessary modifications applies to circumstances in the office of the President as they existed on 5<sup>th</sup> January, 2016;

(iii) Any other reliefs that the Court may deem appropriate and just.

1.4 The Respondent has opposed the Petition on the basis that the **Michelo Chizombe**<sup>1</sup> decision is sound at law. That the vacated previous decisions had failed to consider the combined reading of sections 2 and 7 of the Constitution of Zambia Act No. 1 of 2016 (the Act). Further that Articles 52 and 267(3)(b) and (c) had no relevance in the **Michelo Chizombe**<sup>1</sup> case which was anchored on Article 128 (1) and (3) of the Constitution.

## 2.0 Petitioner's Case

2.1 Both the Petition and Affidavit verifying facts filed on 25<sup>th</sup> March 2025 recounted the instances in which this Court had considered Article 106 (1), (3) and (6) as regards Mr. Edgar Chagwa Lungu's tenure of office as Republican President, his term of office and eligibility in the 2021 General election. According to the Petitioner, in the cases of **Daniel Pule and 3 Others v Attorney General**<sup>2</sup>, **Bampi Kapalasa and Joseph Busenga v Attorney General**<sup>3</sup> and **Legal Resources Foundation Limited and 2 Others v Edgar Chagwa Lungu and Attorney General**<sup>4</sup>, the Court

determined and upheld the eligibility of Mr. Edgar Chagwa Lungu to contest the 2021 presidential elections after considering the effects of sections 2 and 7 of the Act.

- 2.2 The Petitioner further submitted that, notwithstanding, in the **Michelo Chizombe v Attorney General**<sup>1</sup> case, this Court departed from its previous decisions because it did not consider sections 2, 6, and 7 of the Act. Further, that the Court went on to determine that Mr. Edgar Chagwa Lungu was ineligible to participate in any future elections as a presidential candidate.
- 2.3 This position, the Petitioner averred, defied our decision in **Christopher Shakafuswa and Isaac Mwanza v The Attorney General and Electoral Commission of Zambia**<sup>5</sup> in which we had declined to consider whether a councillor was eligible to participate in future mayoral elections on the basis that the matter was premature as nominations had not commenced.
- 2.4 According to the Petitioner, in **Michelo Chizombe v Attorney General**<sup>1</sup> this Court did not consider Article 52(4) and Article 267(3)(b) and (c) or precedents which had holistically considered sections 2, 6 and 7 of the Act. As a result, the Petitioner alleged that the decision in **Michelo Chizombe**<sup>1</sup> was made *per incuriam* and that it contravened Article 52(1) and (4) of the Constitution.

2.5 The Petitioner further, alleged that the Court did not consider the provisions of Article 267(3)(b) and (c) of the Constitution which requires that a reference to a person holding the office of President should be read with modifications necessary to make it applicable to Mr. Edgar Chagwa Lungu who was holding office at the time when the constitutional amendments came into law on 5<sup>th</sup> January 2016.

2.6 Apart from the alleged contraventions, the Petitioner also posed the following question:

**Whether in terms of Article 267(3)(b) and (c) as read together with Article 106(1), (3) and (6) of the Constitution, a reference to a person elected to the office of President was reference to Mr. Edgar Chagwa Lungu, a person who was holding the office of President at that particular time and whether provisions of Article 106(1), (3) and (6) were to be read with the modifications necessary to make them applicable in the circumstances?**

2.7 In the skeleton arguments in support of the Petition, the petitioner argued on the premise of Article 52 that this Court cannot decide on a person's eligibility to run for office of President in future elections before nominations have been filed with the Electoral Commission of Zambia. Citing the case of **Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia**<sup>5</sup>, it was posited that this Court has consistently dismissed premature matters.

- 2.8 It was contended that the **Michelo Chizombe**<sup>1</sup> case was similar to **Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia**<sup>5</sup> and that this Court ought to have considered these authorities as it adjudicated upon the **Michelo Chizombe**<sup>1</sup> case.
- 2.9 Also, not considered, according to the Petitioner, was Article 267(3)(b) and (c) of the Constitution. It was the Petitioner's submission that Article 106(3) of the Constitution applied to Mr. Edgar Chagwa Lungu as a person who was lawfully performing the functions of the office of President at the material time by virtue of Article 267(3)(b)(c). In particular, that having served a period less than three years, he had not served a full term of office.
- 2.10 The Petitioner submitted that this Court had overlooked Article 267(3) in the **Michelo Chizombe**<sup>1</sup> case and therefore its decision was reached *per incuriam*.
- 2.11 He also argued that in departing from its previous decisions, the Court had misapprehended the facts when it found that sections 2 and 7 of the Act had not been considered when in fact they were. Reproducing portions of the **Daniel Pule**<sup>2</sup> case, the Petitioner contended that this Court had actually considered the contents of section 7 of the Act but concluded that the transitional provisions did not suffice.

2.12 It was the Petitioner's position that departure from precedent is to be done in exceptional circumstances such as prior decisions being manifestly wrong, inconsistent with fundamental principles of justice or bringing about legal uncertainty. It was argued that the previous decisions were well-reasoned and consistent while the **Michelo Chizombe<sup>1</sup>** case introduced unnecessary legal ambiguities by disregarding the previous decisions. The Petitioner concluded by praying that we vacate our decision in **Michelo Chizombe<sup>1</sup>** case.

2.13 In orally augmenting the written submissions, the Petitioner repeated his submission that this Court violated Article 52(4) of the Constitution by pronouncing itself on the eligibility of a candidate, Mr. Lungu, who had not yet filed his nomination.

2.14 The Petitioner further submitted that the only way of determining the eligibility of a candidate was through a nomination challenge under Article 52(4) of the Constitution. Further, that the issue of nomination cannot be separated from the issue of eligibility.

### **3.0 Respondent's Response**

3.1 In an Answer and Affidavit in opposition filed on 14<sup>th</sup> April 2025, the Respondent averred that sections 2 and 7 of the Act were not considered in the decisions preceding the **Michelo Chizombe<sup>1</sup>**

case. The Respondent also distinguished the case of **Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia**<sup>5</sup> from **Michelo Chizombe**<sup>1</sup> on the basis that that case did not relate to nominations but was on the question of whether a serving ward councillor can contest in a mayoral election.

3.2 Further, that, a combined reading of sections 2 and 7 of the Act brought to the fore the provisions of Article 35 of the Constitution of Zambia as amended in 1996 which settled the applicability of Article 106 (3) and (6) of the Constitution.

3.3 It was the Respondent's submission that this Court did not contravene Article 52(4) and Article 100 of the Constitution when considering the eligibility of Mr. Lungu. That this is because the **Michelo Chizombe**<sup>1</sup> case was not anchored on the provisions of Article 52(4) but on the provisions of Article 128(1) and (3) of the Constitution which confers this Court with original and final jurisdiction to hear matters relating to the interpretation or alleged violations of the Constitution.

3.4 It was argued by the Respondent that the **Michelo Chizombe**<sup>1</sup> case was not *per incuriam* as Article 267(3)(b)(c) of the Constitution does not relate to eligibility but legality of holding office. That the

provisions for eligibility in respect of the Presidency are contained in Article 106(3) as read with Article 100 inclusive.

- 3.5 In the Skeleton Arguments in further opposition to the Petition, the Respondent argued that this Court did not contravene Article 52(4) and Article 100 of the Constitution when it adjudicated upon the eligibility of Mr. Edgar Chagwa Lungu. The decision in **Michelo Chizombe**<sup>1</sup> was in exercise of jurisdiction conferred by Article 128 of the Constitution and the inherent jurisdiction of the court to depart from its previous decisions. It was the Respondent's position that consequently it was inevitable for this Court to pronounce itself on the eligibility of Mr. Edgar Chagwa Lungu.
- 3.6 Citing the case of **Bizwayo Nkunika v Lawrence Nyirenda and Electoral Commission of Zambia**<sup>6</sup>, the Respondent argued that this Court has the power to inquire into an alleged constitutional contravention notwithstanding the time frame provided for a challenge under Article 101 of the Constitution. The Respondent pointed out that this Court had to set the record clear on the eligibility of Mr. Edgar Chagwa Lungu in line with constitutional provisions.
- 3.7 In a bid to distinguish the case of **Christopher Shakafuswa and Isaac Mwanza v Attorney General and Electoral Commission of Zambia**<sup>5</sup> from the case of **Michelo Chizombe**<sup>1</sup>, the Respondent submitted that the **Christopher Shakafuswa** case was concerned

with a ward councillor's qualification to contest in mayoral elections and whether he was to resign before vying for the mayoral seat. That however, in **Michelo Chizombe**<sup>1</sup> case, Mr. Edgar Chagwa Lungu had already held office twice which rendered him ineligible to contest future presidential elections.

3.8 With regard to the Petitioner's argument that the decision in the **Michelo Chizombe**<sup>1</sup> case was made *per incuriam*, the Respondent argued that this Court exercised its inherent jurisdiction to revisit previous decisions. The Supreme Court decisions in **Harja Import and Export Limited v Zambia Revenue Authority**<sup>7</sup> and **Afritech Asset Management Company Limited and CPD Properties Limited v The Gynae and Antenatal Clinic and Kenneth Muuka**<sup>8</sup> were cited in support of this argument.

3.9 Further, that, the Court's inherent jurisdiction was properly exercised as the previous decisions did not consider the combined reading of sections 2 and 7 of the Act, Article 35 of the Constitution as amended in 1996 and Article 106 of the Constitution.

3.10 In orally augmenting the submissions, the Respondent submitted that the Petitioner had personalized the issue of eligibility to relate to a particular individual, namely the late President Edgar Chagwa Lungu, as opposed to seeking the Court's general interpretation powers under Article 128(1) of the Constitution.

- 3.11 Further, that, this brings a challenge as Mr. Lungu had since passed on and called upon the Court to outrightly dismiss the Petition as the declaratory orders sought by the Petitioner will be a futile academic exercise that will serve no useful purpose.
- 3.12 In support of the above submission, the Respondent referred to the cases of **Michael Mbuyu Mutwena v Attorney General**<sup>9</sup>, **John Sangwa v Attorney General and Law Association of Zambia**<sup>10</sup> and **Chishimba Kambwili v Attorney General**<sup>11</sup>. It was submitted that in the **Chishimba Kambwili**<sup>11</sup> case this Court stated that: “Granting such a declaration will not serve any useful purpose as the seat has already been taken by another person”.
- 3.13 With regards to the allegation that this Court jumped the gun on the **Michelo Chizombe**<sup>1</sup> case by invoking Article 52(4) of the Constitution, the Respondent argued that the **Michelo Chizombe**<sup>1</sup> case was not anchored on the grounds of nominations. That the Court was in that case requested to interpret the position relating to the tenure of the then President that straddled two Constitutional regimes of 1996 and 2016 under Articles 128(1) and 128(3) of the Constitution. Further, that these provisions do not require the Court to wait for a person to file a nomination to interpret a relevant provision of the Constitution.

3.14 It was also argued that the Petitioner's submission that the reading of Article 267(3)(b) and (c) together with Article 106(1)(3) and (6) of the Constitution resulted in the Court coming to a wrong conclusion in the **Michelo Chizombe**<sup>1</sup> case was flawed. This is on account that Article 267(3)(b) and (c) of the Constitution is not a transitional provision which applies when referring to the qualifications of eligibility of the President under Article 106(2)(3) and (6) for a person whose tenure has straddled two Constitutional regimes. That Article 267 of the Constitution has therefore been misconstrued and misapprehended by the Petitioner.

3.15 It was the Respondent's submission that Article 267 of the Constitution speaks to the idea or the notion that the law is continuously in force despite the change in the Constitution and therefore that those assigned functions in the offices state organs, state institutions and local authorities shall continue with the necessary modification.

3.16 It was further submitted that when it comes to eligibility to stand in an election and contextualizing the words "twice held office" under Article 106(1)(3) and (6) of the Constitution, this Court guided in the **Michelo Chizombe**<sup>1</sup> case that this requires a combined reading of section 2 and 7 of the Act as read with Article 35 of the Constitution as amended in 1996 and not Article 267 of the Constitution.

3.17 The Respondent finally called upon the Court to award costs to the Respondent as the Petitioner had arbitrarily and consistently come before this Court on matters of a political nature, and in this Petition purported to act in a representative capacity of a third party.

3.18 Based on the above, the Respondent prayed that the petition be dismissed.

#### **4.0 Petitioners' Reply**

4.1 In his Reply filed on 16<sup>th</sup> July 2025, the Petitioner maintained his position that this Court's decision in **Michelo Chizombe**<sup>1</sup> case was not only made *per incuriam* for overlooking Article 267(3) and departing from sound previous decisions but was also a violation of Article 52 of the Constitution. On the aspect of violating the Constitution, the Petitioner averred that this Court in **Michelo Chizombe**<sup>1</sup> had been invited to intervene in a manner that triggered Article 52(4) of the Constitution. He averred that the Court determined the validity of an individual's candidature way past the nomination period and the election in issue.

4.2 In his Skeleton Arguments in reply, the Petitioner maintained the line of arguments canvassed in his Skeleton Arguments in support of the Petition and therefore, the content will not be rehashed here.

## 5.0 Analysis and Determination

5.1 We have carefully considered the Petition, the Answer, Affidavit evidence and arguments advanced by the parties. We wish to state at this juncture that the question the Petitioner seeks for interpretation is misplaced as the only issues which should be contained in a Petition are allegations of contravention of the Constitution. The Court in determining the alleged contraventions will inevitably go through the rigorous process of interpreting the relevant constitutional provisions in dispute before arriving at a decision as to whether a provision has been contravened or not.

5.2 That said and arising from the relief sought, the main issues for determination as we see them are:

- (i) **Whether the personalisation of the alleged contraventions and relief in the name of the late Mr. Edgar Chagwa Lungu renders the proceedings an academic exercise?**
- (ii) **Whether the Court's determination in the Michelo Chizombe<sup>1</sup> case that Mr. Edgar Chagwa Lungu having been elected twice and held office twice was ineligible to participate in any future Presidential elections as a Presidential candidate prior to the formal submission of his nomination, contravenes Article 52(4) as read with Article 100 of the Constitution? and**
- (iii) **Whether the Court's decision in the Michelo Chizombe<sup>1</sup> case was *per incuriam* on account of its alleged failure to take into account the provisions of Article 267(3)(b) and (c) of the Constitution in determining whether the provisions of Article 106(6) applied to Mr. Edgar Chagwa Lungu, who was holding office at the time the 2016 amendments came into effect?**

5.3 With regard to the personalisation of the alleged contraventions and relief, we note that the factual basis of the Petition, the alleged contraventions and the relief are all personalised and relate specifically to Mr. Edgar Chagwa Lungu. The Court takes judicial notice of the fact that Mr. Edgar Chagwa Lungu passed on in a South African hospital on 5<sup>th</sup> June, 2025. Further, the first relief the Petitioner seeks in this action is declaratory in nature.

5.4 On the nature of declaratory remedies, we are persuaded by the Supreme Court in the case of **Communications Authority v Vodacom Zambia Limited**<sup>12</sup>, wherein it stated as follows:

A declaration is a discretionary remedy. A party is not entitled to it as a matter of right. Of course, the discretion must be judiciously exercised. The Court: -

- (a) Will not pass a declaration judgment casually, lightly or easily. The remedy should be granted for good cause, on proper principles and considerations. It must be made sparingly; with care and utmost caution. It is a remedy which courts discourage, except in very clear cases.
- (b) Will not grant a declaration when no useful purposes can be served or when an obvious alternative and adequate remedy, such as damages, is available.
- (c) Will not grant a declaration unless all parties affected by, and interested in it are before the Court. (emphasis ours)

5.5 We, in the case of **Godfrey Malembeka (suing as Executive Director of Prisons Care and Counselling Association) v The Attorney General and The Electoral Commission of Zambia**<sup>13</sup>,

endorsed the principles stated in the above authority. We hereby reaffirm the above stated principles by the Supreme Court and adopt the words as our own. The question, therefore, is whether the declaratory remedy as prayed for by the Petitioner relating to the alleged contravention of Article 52(4) of the Constitution is available. As clearly stated above, a declaratory remedy is a discretionary remedy and should only be exercised judiciously and for good and compelling reasons. In the case at hand Mr. Edgar Chagwa Lungu who is not a party to the proceedings but was an interested person has since passed on. As such, we find that granting such a declaration as sought by the Petitioner in his purported representative capacity would not serve any useful purpose and renders the Petition an academic exercise.

5.6 The second remedy sought by the Petitioner is an interpretation of Article 267(3)(a)(b) and (c), read together with Article 106(1)(3) and (6) of the Constitution. As stated at paragraph 5.1, the issue of interpretation in a Petition is misplaced and we shall not entertain it.

5.7 That said, this Petition ought to fail for lack of merit.

5.8 Before we leave this matter, we feel compelled in the public interest and as guardians of the Constitution to put to rest the Petitioner's fundamental misconceptions and misapprehensions with regard to

the provisions of Article 52(4) and 267(3)(a)(b) and (c) as they relate to this Petition.

5.9 In terms of Article 52(4), we wish to state that the gravamen of the **Michelo Chizombe**<sup>1</sup> Petition was the applicability of Article 106 of the Constitution to Mr. Lungu's first term. It was not concerned with Article 52 of the Constitution on nominations. In our judgment in that case, it was our finding and decision that Mr. Lungu's first term was "saved" by the transitional clauses and in particular section 2 and 7 of the Act and continued in accordance with the repealed Article 35 of the Constitution as amended in 1996. Further, that Article 106 of the Constitution did not apply in retrospect contrary to the holding in the **Legal Resources Foundation**<sup>4</sup> case, and that the decision in that case was therefore *per incuriam*. The declaration that Mr. Lungu having been elected twice and twice held office was ineligible to participate in any future elections as a presidential candidate was consequential as pleaded. The Petition had nothing to do with nominations and Article 52(4) of the Constitution is therefore, irrelevant in the circumstances of that case.

5.10 On the applicability of Article 267(3)(b) and (c) of the Constitution to Mr. Lungu's first term, we have struggled to appreciate the relevance of this provision. As expounded in our decision in the **Michelo Chizombe**<sup>1</sup> case, the transition of Mr. Lungu's first term

into the post 2016 era was provided for by the Act which contained adequate transitional provisions.

5.11 In the **Legal Resources Foundation**<sup>4</sup> case, we referred to the learned authors of **Bennion on Statutory Interpretation** at section 96 where they state that:

**Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition.**

5.12 Further and in the case of **Mutembo Nchito v The Attorney General**<sup>14</sup>, we held that:

**Act No. 1 of 2016 is the enabling or effecting Act of the constitutional amendments and in it are all the relevant provisions for ensuring a seamless transition from one constitutional order to another.**

5.13 In view of the above therefore, it is quite clear that the transitional clauses in the Act and in particular sections 2 and 7 ensured a seamless transition of Mr. Lungu's first term from one constitutional order to another, and Article 267(3)(b) and (c) of the Constitution has absolutely no relevance to the transition.

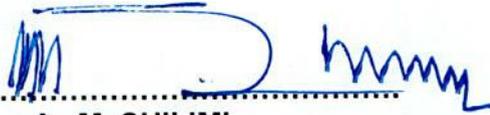
5.14 We finally wish to state that while this Court recognises every person's right to access the courts to ventilate their constitutional grievances, this Petition is a veiled attempt at appealing the **Michelo Chizombe**<sup>1</sup> case and a clear abuse of the Court process. It is not only frivolous and vexatious, but also meant to embarrass the Court.

The Court will not shy away from imposing costs on parties that persist on this course.

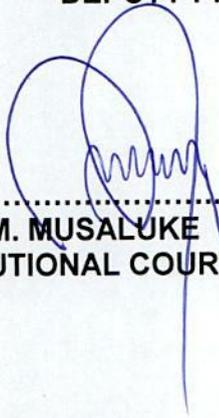
**6.0 Final Orders**

6.1 The Petition lacks merit and is hereby dismissed.

6.2 Costs are accordingly awarded to the Respondent.



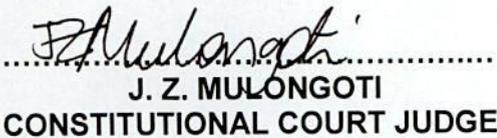
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**DEPUTY PRESIDENT – CONSTITUTIONAL COURT**



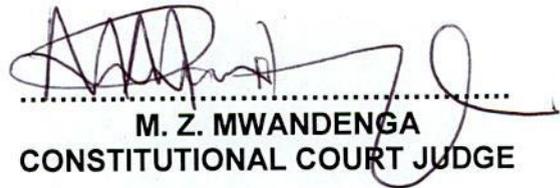
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**CONSTITUTIONAL COURT JUDGE**



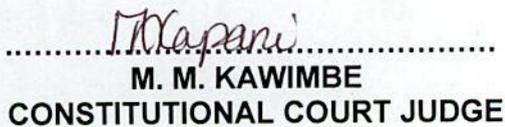
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**CONSTITUTIONAL COURT JUDGE**



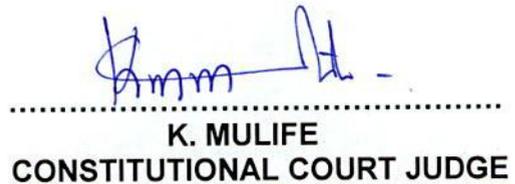
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**CONSTITUTIONAL COURT JUDGE**