

IN THE CONSTITUTIONAL COURT OF ZAMBIA

2024/CCZ/0019

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)

IN THE MATTER OF:

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

IN THE MATTER OF:

**REMOVAL OF JUDGES FROM
OFFICE**

IN THE MATTER OF:

**INTERPRETATION OF THE
CONSTITUTION ON THE
QUALIFICATIONS OF JUDICIAL
COMPLAINTS COMMISSION
MEMBERS**

IN THE MATTER OF:

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

IN THE MATTER OF:

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

IN THE MATTER OF:

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



TRESFORD CHALI

PETITIONER

AND

THE JUDICIAL COMPLAINTS COMMISSION

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

Coram: Shilimi, DPC, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe and Mulife JJC on 5th November, 2025 and 20th January, 2026.

For the Petitioner:

In Person

For the 1st and 2nd Respondent:

Mrs. L. I. Malawo - Daka, Principal State Advocate, Mrs. C. L Mwanza, Principal State Advocate and Mr. L. Mun'gongo, State Advocate.

JUDGMENT

Musaluke JC, delivered the Judgment of the Court.

Cases referred to:

1. *Hakainde Hichilema, Geoffrey Bwalya Mwamba vs. Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and Attorney General* 2016/CCZ/0031
2. *Zuma and Two Others v The State* (CCT5/94) [1995] ZACC 1
3. *Agholor v Cheesebrough Ponds (Zambia) Limited* (1976) Z.R. 1
4. *R v Secretary of State for the Home Department, Ex Parte Pierson* (1998) AC 539 (UK)
5. *Miller v Secretary of State for Exiting the European Union* (2017) UK SC 5
6. *Attorney General v Times Newspapers Limited* (1974) AC 273 (UK)
7. *Civil Service Unions v Minister for the Civil Service* (1985) AC 374 (UK)
8. *Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick* 2020/CCZ/A002
9. *Ikelenge Town Council v National Pension Scheme Authority* 2022/CCZ/022

10. *Gervas Chansa v The Attorney General 2019/CCZ/004*
11. *Dean Namulya Mungomba v Machungwa and Others SCZ Judgment No.3 of 2003*
12. *Bowman Lusambo v The Attorney General 2023/CCZ/001*
13. *Munir Zulu v The Attorney General 2025/CCZ/0010*
14. *Lloyd Chembo v The Attorney General 2017/CCZ/0011*

Legislation referred to:

- The Constitution of Zambia (Amendment) Act No. 2 of 2016
- The Judicial (Code of Conduct) Act No. 13 of 1999
- The Judicial (Code of Conduct) (Amendment) Act No. 13 of 2006
- The Constitutional Court Rules Statutory Instrument No. 37 of 2016

[1] Introduction

- [2] The Petition before the Court arises from the removal from office of three Constitutional Court Judges namely: Anne Sitali, Mugeni Mulenga, and Palan Mulonda on the recommendation of the Judicial Complaints Commission (JCC). The Petitioner challenges both the legality of the JCC's composition and its actions, while the Respondents defend the JCC's authority and the process followed.

[3] Background

- [4] The relevant background as stated by the Petitioner is that following the dismissal of the case of **Hakaide Hichilema, Geoffrey Bwalya**

Mwamba v Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and Attorney General¹ on grounds that the 14 days in which to hear a Presidential petition challenging the election of a President had lapsed, a lot of citizens filed complaints against Judges that sat to hear that case. That the said complaints were particularly against Hon. Lady Justice Hilda Chibomba (the President of the Constitutional Court then), Hon. Lady Justice Professor Margaret Munalula (current President of the Constitutional Court), Hon. Lady Justice Anne Sitali, Hon. Lady Justice Mugeni Mulenga and Hon. Mr. Justice Palan Mulonda.

[5] The Petitioner alleges that the following individuals filed complaints against the said judges: Peter Sinkamba, Douglas Syakalima, Kaimfa Chanda, Dante Saunders, Charles Longwe, Joseph Busenga, Emmanuel Mtonga, Alfred Mbewe and Moses Kalonde.

[6] That the complaint by Moses Kalonde resulted in the removal from office of Judges Anne Sitali, Mugeni Mulenga and Palan Mulonda, hence the petition herein.

[7] **Petitioner's Case**

[8] The Petitioner's case is built on the assertion that the JCC as constituted lacks legitimacy. He argues that the 2016 constitutional

amendment which created the JCC did not prescribe qualifications for its members leaving a *lacuna*. In his view, only persons who have held high judicial office should qualify akin to the requirements for members of the Tribunal and not merely lawyers as was permitted under the repealed Judicial Complaints Authority (JCA).

- [9] The Petitioner contends that prior to 2006, there was a 'Complaints Committee' a body constituted under the Judicial (Code of Conduct) Act No. 13 of 1999 to receive and hear complaints against Judges.
- [10] That by Act No. 13 of 2006, the Judicial Complaints Authority (the JCA) was constituted in place of the Complaints Committee with the same power, functions and qualifications. That the JCA like its predecessor did not have powers to recommend for the removal of a judge as that was the preserve of the Tribunal and that if the JCA opined that a Judge ought to be removed from office, they would recommend to the Chief Justice who would request the President to set up a Tribunal.
- [11] The Petitioner further contends that the qualifications for one to be a member of the JCA, were that a person should have held or should qualify to hold a high Judicial Office while the qualifications for one to be a member of the Tribunal were that a person should hold or should have held High Judicial Office. He alleges that the difference being that

for one to sit on the Tribunal, such a person should have been Judge while even a lawyer could sit on the JCA.

[12] The Petitioner argues that the amendment to the Constitution in 2016 saw the establishment of the JCC. That the establishment of the JCC was not by an amendment to the Judicial Code of Conduct Act as was the case with JCA. That the JCC was directly established as a constitutional body.

[13] He contends that the President erred in relying on the repealed Judicial Code of Conduct Act to appoint members of the JCC and that the JCC therefore, lacked quorum when it recommended the removal of the Judges.

[14] The Petitioner argues that the JCC is not a court under Article 120 of the Constitution and has no jurisdiction to interpret constitutional provisions or alter jurisprudence. He criticizes the JCC for having interpreted Articles 118 (2) (e) and 103 of the Constitution (Amendment) Act No. 2 of 2016 (the Constitution) in a manner that extended the strict 14-day timeline for Presidential election petitions, arguing that this amounted to unconstitutional interference with judicial independence.

[15] The Petitioner has challenged the JCC's holding that the three removed Judges were not qualified to hold the position of Judge of the Constitutional Court. The Petitioner asserts that once a person has been issued Letters Patent as a Judge, they are presumed qualified unless proven otherwise. He emphasizes that judges with expertise in human rights or litigation experience are sufficiently qualified to serve on the Constitutional Court.

[16] He faults the JCC for applying a standard of proof lower than the civil standard of balance of probabilities and proposes instead an intermediary standard higher than civil but lower than criminal.

[17] The Petitioner also stresses the constitutional guarantee of judicial independence by arguing that judges do not require permission to consult or to write rulings and that the JCC's finding that the Judges erred by writing rulings over the weekend violated this independence.

[18] He further alleges that the complaint against the Judges was *res judicata* having been dismissed previously, and that the Commission improperly revived it. The Petitioner particularly alleged that in its report, the JCC described its chairman to be unethical and breached the rules of meetings for not having declared interest in the complaints

that were made against the removed Judges. That the JCC argued that its chairman was a lawyer for Judge Chibomba when a citizen made a complaint against her over the same case the Judges were removed on. That the JCC concluded that since its chairman did not declare interest, the proceedings in which the JCC dismissed the previous complaints were a nullity.

[19] The Petitioner argues that by sacrificing its chairman for the sake of removing Judges, the JCC was trying to clothe itself with jurisdiction to hear a matter that had been dismissed before and therefore the principle of *res judicata* applied.

[20] The Petitioner also alleges that the JCC erred when it believed the testimony of Judge Chibomba despite making a finding that the immediate past President of the Constitutional Court was incompetent and lacked the ability and knowledge to do her Job.

[21] Particularly, that the JCC in its report acknowledged that on 2nd September, 2016 the Respondents' lawyers insisted that the Court would lose its jurisdiction at midnight yet the JCC believed the testimony by Judge Chibomba that the issue of jurisdiction did not arise on that day and that she did not tell any judge to write an opinion over the weekend on jurisdiction. That by upholding the testimony of Judge

Chibomba, the JCC acknowledged that she breached Article 122 of the Constitution.

[22] The Petitioner argues that judges enjoy immunity and security of tenure and cannot be removed for interpreting the law in a particular way. That therefore, the removed Judges enjoyed immunity from being sued or disciplined for deciding a case in a particular way. Additionally, that judges also enjoy neutrality and independence in the performance of their duties which meant freedom from the Executive and Party Politics and vested interest and that they should not be subjected to arbitrary removal from office.

[23] The Petitioner contends that under Article 144 (4) (a) and (6) of the Constitution, all proceedings of the JCC must be held in camera and that the term "proceedings" includes all documents including a notice of hearing and all hearings pertaining to the matter. Further that in camera means that all documents and hearings must be in private and away from members of the public.

[24] The Petition contends that the JCC violated the Constitution by advertising the notice of hearing of the Judges' complaint in a newspaper.

[25] By virtue of what has been stated above, the Petitioner contends that the actions of the President and Respondents are a gross violation of the Constitution and violate the independence, neutrality, professional integrity, security of tenure, rule of law, impartiality of judges and the administration of justice.

[26] On this basis he seeks declarations nullifying the JCC's report and the President's removal of the Judges, and calls for Parliament to legislate qualifications for JCC members.

[27] The Petitioner specifically seeks the following declaratory reliefs and orders:

- i. A declaration that except Judge Prisca Nyambe, the members of the JCC are not qualified as they do not hold or have never held High Judicial Offices;
- ii. A declaration that as a result of (i) above, the JCC did not form a quorum to hear and recommend for the removal of Judges Anne Sitali, Mugeni Mulenga and Palan Mulonda from office;
- iii. An order that Parliament enacts legislation to specify the qualifications of the members of the JCC;
- iv. A declaration that it is unconstitutional for the JCC to interpret the Constitution in the manner they did in their report dated 20th October 2024 and to change the jurisprudence;

- v. A declaration that the standard of proof to assail the qualifications of a person holding Letters Patent constituting them as a judge should be at an intermediary level. That is higher than the balance of probabilities but lower than the criminal standard of proof beyond reasonable doubt;
- vi. A declaration that the Respondents abrogated the Constitution when they advertised part of the proceedings in the Newspaper;
- vii. A declaration that the matter that led to the removal of Judges Anne Sitali, Mugeni Mulenga and Palan Mulonda was res judicata;
- viii. A declaration that the consultations at any time between or among Judges on matters they are handling in court does not amount to holding an "illegal Judges conference";
- ix. An order of Certiorari to remove into the Constitutional Court for purposes of quashing the Report of the Judicial Complaints Commission dated 20th October 2024 together with its findings and recommendations to the President to remove Judges Anne Sitali, Mugeni Mulenga and Palan Mulonda from office;
- x. A declaration that the President's removal of Judges Anne Sitali, Mugeni Mulenga and Palan Mulonda is null and void ab initio;
- xi. A declaration that the jurisdiction of the JCC to hear and determine complaints against Judges does not extend to matters where a Judge has interpreted the law;
- xii. Costs of and Incidental to these Proceedings
- xiii. Any other relief that the court shall deem fit.

- [28] The Petitioner also filed Skeleton Arguments in support of the petition dated 28th October 2024. A perusal of the said skeleton arguments revealed that the Petitioner was restating the contents of his Petition which we have summarized above.
- [29] The Petitioner filed his reply on 25th November, 2025. In the said reply, the Petitioner reiterates his arguments in the petition.
- [30] In his Skeleton Arguments in Reply, the Petitioner argues in respect to the Respondents' argument regarding constitutional interpretation and silence on qualifications of the members of the JCC that Article 128 of the Constitution vests the powers of interpretation in the Constitutional Court and that the President should not have appointed the members of the JCC but should have first sought this Court's interpretation on qualifications of the members of the JCC.
- [31] On the Respondents' response on the applicability of the Judicial Code of Conduct Act, the Petitioner acknowledged the relevance of the Judicial Code of Conduct Act and that Article 236 of the Constitution stipulates provisions of the Judicial Code of Conduct Act that should apply to the JCC. The Petitioner's contention however, is that qualifications of members of the JCC as contained in section 20 of the Judicial Code of Conduct Act is not one of those provided in the

Constitution to apply to the JCC. He argues that therefore, the South African case of **Zuma and two Others v The State**² is quoted out of context by the Respondents.

[32] Regarding the Respondents' submission that the JCC benefits from having non-judicial members, the Petitioner submits that the core issue is the interpretation of the Constitution which straddles two constitutional regimes. Specifically, that the 1991 Constitution as amended in 1996, had a Tribunal with specific member qualifications of being judge and specific mandate of recommending for the removal of a judge. Additionally, that the Judicial Code of Conduct Act had the JCA with member qualifications of being both a judge and lawyer but with no mandate to recommend for the removal of a judge.

[33] That the constitutional amendment of 2016 abolished both the Tribunal and the JCA and established the JCC but did not provide for the qualifications of members to sit on the JCC. However, that the Constitution gives the JCC the mandate to recommend for the removal of Judges which mandate was only for the Tribunal. The Petitioner opines that the best scenario should be that a body with powers to recommend for the removal of a Judge must be constituted by Judges, former or present.

[34] Regarding the Respondents' assertion that the JCC has the mandate to assess the qualifications of a judge and to remove a judge who is not qualified, it is the Petitioner's argument firstly that the JCC only has powers to support or not to support a person nominated as a candidate to be a judge and not a person sworn in as a judge. Secondly, that a critical reading and analysis of Article 143 of the Constitution reveals that the JCC has no powers to remove a judge based on lack of qualifications. That therefore the JCC has no powers to look into the qualifications of a serving judge under Article 143 of the Constitution.

[35] The Petitioner submits that a qualified person can be incompetent. That therefore to remove a judge on incompetence one does not need to demonstrate that the judge is not qualified for the job. That incompetence has to do with how one performs their duties. In support of this assertion reference was made to the case of **Agholor v Cheesebrough Ponds (Zambia) Limited**³. The Petitioner further argues that the JCC found that the judges were incompetent not because they were not qualified but because of the manner they interpreted the law on one occasion instead of a series of occasions.

[36] The Petitioner prays that the petition and its relief be granted.

[37] Respondents' case

[38] The Respondents filed their Answer to the petition on 18th November, 2024 in which they denied the Petitioner's assertions. They argue that the qualifications for JCC members are indeed prescribed in the Judicial Code of Conduct Act No. 13 of 1999, as amended in 2006 and that this statute remains applicable under the Constitution.

[39] They maintain that Commissioners such as Eva Jhala and Kephias Kampampa Katongo qualify to hold high judicial office by virtue of their decades of legal practice and that the JCC was properly constituted with quorum. They rely on Article 236 (2) (a) of the Constitution which empowers the JCC to enforce the Code of Conduct for judges and judicial officers including qualifications and argue that the JCC acted within its constitutional mandate.

[40] On the issue of the Judges' qualifications, the Respondents assert that evidence before the JCC including a Parliamentary report demonstrated that the Judges were not qualified and that the JCC was entitled to consider this evidence.

[41] The Respondents also dispute the Petitioner's account of the weekend ruling. They state that on 2nd September, 2016 the full bench adjourned the petition to 5th September, 2016 but Judges Sitali and Mulenga

convened over the weekend without the President of the Court's approval, crafted a ruling and had it endorsed by Judge Mulonda. The Respondents argue that this was an illegal meeting that overturned the full bench's decision.

[42] The Respondents reject the claim of *res judicata* insisting that Article 144 (1) of the Constitution mandates the JCC to investigate all complaints lodged before it.

[43] On judicial tenure, the Respondents acknowledge that judges enjoy security of tenure but argue that this protection does not extend to judges found incompetent or guilty of gross misconduct. They emphasize that the removal was not based on constitutional interpretation but on misconduct.

[44] The Respondents maintain that proceedings were held in camera and that the advertisement of the hearing was necessitated only because counsel for the Judges refused to acknowledge receipt of the notice. They instead accuse the Petitioner of breaching confidentiality by exhibiting the JCC's report.

[45] The Respondents filed their skeleton arguments in support of answer and affidavit in opposition on 18th November, 2024. In response to the Petitioner's allegations that the JCC Members are not qualified, it is the Respondents' argument that the Petitioner's argument that constitutional silence on qualifications implies a restrictive qualification is unfounded. According to the Respondents, silence does not imply exclusion or restriction. Rather that silence indicates legislative intent for flexibility in qualifications standards for JCC members.

[46] The Respondents argue that the Constitution was intentionally left open to allow for diverse legal expertise, ensuring that the JCC functions effectively and inclusively. In support of this assertion, reliance was placed on the case of **R v Secretary of State for the Home Department, Ex Parte Pierson**⁴ in which Wilkinson stated that:

"Constitutional silence allows for flexible interpretation"

[47] The Respondents further argue that the Petitioner's assertion that the Judicial Code of Conduct Act is inapplicable to the qualifications of the JCC members overlooks the Act's role in guiding ethical framework within which the JCC operates.

[48] The Respondent submit that the Judicial Code of Conduct remains relevant as it offers a structured approach to maintaining standards of

integrity, impartiality and accountability among JCC members even if it does not specify qualifications. Further reliance was placed on the case of **Miller v Secretary of State for Exiting the European Union**⁵ wherein the English Supreme Court is quoted to have said that:

“Where a Constitution or Foundation document is silent, relevant statutory guidance can provide practical context, implying the Judicial Code of Conduct Act may still have value in guiding Judicial Complaints Commission practices”.

[49] The South African case of **Zuma**² was also cited and the Respondents submit that in that case the court guided that statutory laws should complement constitutional provisions, not contradict them, making the Judicial Code of Conduct Act relevant to maintaining standards without limiting qualifications.

[50] In responding to the Petitioner’s assertion that public interest requires the JCC to include only judges, it was the Respondents’ submission that the Constitution reflects public interest for inclusivity, demonstrated by its silence on requiring exclusive judicial members, including legal practitioners hence the JCC’s effectiveness in addressing complex legal and ethical issues beyond strictly judicial matters. The Respondents further submit that public interest aligns with transparency and democratic principles which this broader

composition fulfills. To buttress this point, the Respondents cite the case of **Attorney General v Times Newspapers Limited**⁶ and argue that in that case, the court emphasized that:

“Public interest and intent should not restrict constitutional interpretation but rather promote openness and inclusivity.”

[51] Regarding the Petitioner’s allegation on the qualifications of Judges, the Respondents endorse the JCC’s finding that the three removed Judges were not qualified to hold the position of Judge of the Constitutional Court. The Respondents submit that there is evidence that establishes a clear lack of requisite qualifications for the removed Judges to hold office in the Constitutional Court. In support of this submission, the Respondents rely on the case of **Civil Service Unions v Minister for the Civil Service**⁷ where they quote the court as holding that:

“Oversight bodies and Commissions can investigate qualifications and appointments if they affect public interest or the functioning of governmental institutions.”

[52] The Respondents therefore, submit that the JCC’s role includes assessing judges’ qualifications in the interest of the Judiciary’s reputation and efficiency. That the JCC acted within its powers in

determining that the three removed Judges lacked the qualifications necessary to hold office as judges of the Constitutional Court.

- [53] With regards to the Petitioner's allegation that the JCC's handling of the complaints and the claim that the proceedings were a nullity, it was the Respondents' submission that the complaint in question was not *res judicata* and that the doctrine of *res judicata* applies only where a matter has been conclusively determined by a court of competent jurisdiction. Additionally, that the JCC is constitutionally empowered to receive and investigate complaints under Article 144(1) of the Constitution.
- [54] In light of the foregoing, the Respondents submit that the Constitution expressly grants the JCC the authority to investigate complaints lodged against judges and that this mandate is crucial for maintaining judicial integrity and accountability. That the 1st Respondent acted within its constitutional mandate under Article 144(1) of the Constitution.
- [55] In conclusion, the Respondents pray that this Court dismisses the Petitioner's petition in its entirety and affirm the validity of the JCC's actions as consistent with constitutional and legal principles.

[56] **At the hearing**

[57] At the hearing, the parties gave oral submissions and reiterated the submissions already on record as summarised above. For brevity we, will therefore, not restate what was argued at the hearing.

[58] **Analysis and Determination**

[59] At the very outset we wish to state that we had difficulties comprehending the petition before us and this is due to the manner that the petition was prepared. We note that the petition contained evidence, legal arguments and was manifestly incompetent. We find this unfortunate considering that the Petitioner herein is of counsel and is deemed to be well versed with the rules governing commencement of proceedings before this Court.

[60] Order IV of the Constitutional Court Rules (CCRs) provides for commencement of actions before this Court. Order IV rule 1 particularly provides for the commencement of an action by petition and Order IV rule 2, guides on what should be contained in a petition as follows:

- (1) **Except as otherwise provided in the Constitution. the Act and these Rules, all matters under the Act brought before the Court shall be commenced by a petition in Form 1 set out in the Schedule.**

- (2) A petition shall disclose-
 - (a) the petitioner's name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision allegedly violated; and
 - (d) the relief sought by the petitioner.
- (3) A petition shall be signed by the petitioner or the petitioner's advocate.
- (4) A petition shall be filed with an affidavit verifying facts.

[61] A petition should therefore not contain evidence, legal arguments or other extraneous matters as was the case with this petition.

[62] The above notwithstanding, as a Court tasked with the responsibility of dispensing constitutional justice and bearing in mind the dictates of Article 118 (2) (e) of the Constitution, we took time to consider the issues raised by the Petitioner in his petition. Thus, we have considered the petition, the affidavit verifying facts, the Respondents' answer and affidavit in opposition as well as the reply by the Petitioner. We have also considered the arguments both written and oral advanced by the parties in respect to this matter.

[63] From a perusal of the above documents, we consider that the issues that fall for this Court's determination are whether or not:

- i. The allegations made by the Petitioner against the Respondents herein are constitutional in nature and fit for determination by this Court; and
- ii. Whether the Petitioner is entitled to any of the reliefs sought in his Petition

[64] It is trite that Article 128(1)(e) of the Constitution bestows on the Court jurisdiction to determine whether or not a matter falls within the jurisdiction of the Court. Article 128(1)(e) of the Constitution provides as follows:

Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear-

- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.

[65] In making such a determination the starting point is Article 1 (5) of the Constitution, which provides that a matter relating to the Constitution shall be heard by this Court. Article 128(1)(a) and (b) of the Constitution further provides that this Court has jurisdiction to hear a matter relating to the interpretation, violation or contravention of the Constitution.

[66] It is therefore, clear that the jurisdiction of this Court is limited by the Constitution itself. The jurisdiction of the Constitutional Court has been aptly settled in numerous decisions of this Court. In the case of **Bric**

Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick⁸ we held as follows:

The Constitutional Court of Zambia is a specialized court set up to resolve only constitutional questions. In that sense, it is separate from the general court hierarchy under which matters move from lower courts up to the final court of appeal. This Court exemplifies what the learned author Andrew Harding in *Fundamentals of Constitutional Courts* calls a centralized system as opposed to a diffused system. In the latter, a supreme court has general jurisdiction over civil and criminal matters as well as constitutional issues. In our case, the Constitutional Court exists only for constitutional matters hence it is separate and additional to the Supreme Court which has general jurisdiction. In the Zambian court system, all questions of general nature, including procedural questions, must proceed through the courts of general jurisdiction..."

[67] In the case of **Ikelenge Town Council v National Pension Scheme Authority⁹**, we also held that the Constitutional Court is a specialised forum, distinct from the ordinary courts and was created to solely resolve constitutional questions.

[68] The definition of a constitutional question was given in the case of **Gervas Chansa v The Attorney General¹⁰** in which we held as follows:

A constitutional question is defined in the blacks' law dictionary as a legal issue resolved by the interpretation of the Constitution rather than the statute.

- [69] Bearing in mind the provisions of Articles 1 (5) and 128 of the Constitution and the guidance given by this Court in the above cases regarding its jurisdiction, we now turn to address the underlying question of whether or not the allegations raised by the Petitioner against the Respondents are constitutional in nature and fit for determination by this Court.
- [70] The Petitioner has challenged the manner in which the JCC conducted itself. Particularly, the Petitioner challenges the Report that was issued by the JCC and claims that the proceedings were a nullity and unconstitutional.
- [71] We note that the Petitioner's petition is anchored on the findings of the JCC in relation to the Report of 20th October, 2024 which it rendered to the President of the Republic of Zambia recommending removal from office of Justices Sitali, Mulenga and Mulonda.
- [72] It is trite in this jurisdiction, that a person who seeks to challenge the actions or decisions of an inferior administrative body can only do so by way of judicial review. In the case of **Dean Namulya Mung'omba v Machungwa and Others**¹¹, the Supreme Court had the following to say:

Once it is accepted that our Rules do not provide for the practice and procedure on judicial review and we adopt the practice and procedure followed in England, our Rules for the purposes of judicial review are completely discarded and there is strict following of the procedure and practice in Order 53 of RSC. It will be noted from the learned editors of the White Book (RSC) that Order 53 created a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other persons or bodies which perform public duties or functions. The procedure of judicial review enables one seeking to challenge an administrative act or omission to apply to the High Court for one of the prerogative orders of mandamus, certiorari or prohibition, or in appropriate circumstances to declaration, injunction or damages. (Emphasis added).

[73] We endorse this holding by the Supreme Court and adopt it as such. The JCC being an inferior administrative body, its actions can only be challenged in the High Court. The jurisdiction of this Court is however, not ousted to deal with any constitutional issue that may arise in those judicial review proceedings in the High Court. Article 128 (2) of the Constitution has given a safeguard and provides as follows:

Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

[74] This provision is couched in mandatory terms. Where therefore, a question relating to the Constitution arises in any court, that court is directed to refer that particular question to this Court for determination. This is indeed what we guided in the case of **Bowman Lusambo v The Attorney General**¹² and reaffirmed in the case of **Munir Zulu v The Attorney General**¹³.

[75] In **Lloyd Chembo v Attorney General**¹⁴ we emphasized the principle of comity between courts. We held as follows:

There is comity between the courts constituting the Judiciary. This 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. The nature and status of this Court is such that it deals with direct violations of the Constitution. By virtue of Article 1 (5) a matter relating to the Constitution is heard by the Constitutional Court. The rest of the law is adequately handled by other courts. It is therefore our considered view that the impugned Petition is not ripe for hearing as a constitutional violation before this Court.

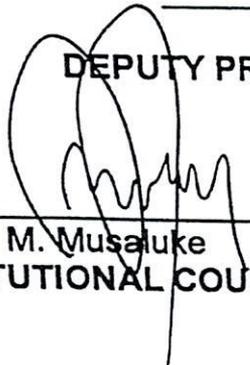
[76] We therefore, find that the issues raised by the Petitioner seek to assail the actions and findings of the JCC in its Report dated 20th October, 2024. It is with the above in mind that we hold that the Petitioner ought to have challenged the Report of the JCC on the removal of Justices Sitali, Mulenga and Mulonda by way of judicial review before the High Court as all his allegations emanate from the said Report.

- [77] We also take Judicial Notice of the fact that Justices Sitali, Mulenga and Mulonda have in fact commenced judicial review proceedings before the High Court under Cause No. 2024/HP/1651 seeking to impugn the actions of the JCC and the decision of the President of the Republic of Zambia to remove them as Judges of this Court.
- [78] If in the process of hearing the judicial review proceedings by Justices Sitali, Mulenga and Mulonda, a constitutional question arises, the court presiding over that matter is mandated to refer such constitutional question to this Court in line with Article 128(2) of the Constitution.
- [79] We are therefore of the considered opinion that there is no legal basis upon which this Court can invoke its jurisdiction to determine the allegations raised by the Petitioner in his petition. The actions and the Report by the JCC an inferior administrative body can only be challenged through judicial review proceedings in the High Court.
- [80] Further, it is our finding that in order to maintain the principle of comity of courts, we determine that in line with Article 128 (1) (e) of the Constitution, this matter does not fall within the jurisdiction of the Constitutional Court.
- [81] The petition is therefore, dismissed for want of jurisdiction.

[82] Considering that the Petitioner was exercising his constitutional right under Article 2 of the Constitution to petition this Court, we order each party bear own costs.



A. M. Shilimi
DEPUTY PRESIDENT - CONSTITUTIONAL COURT



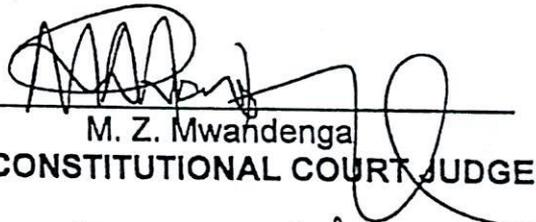
M. Musauke
CONSTITUTIONAL COURT JUDGE



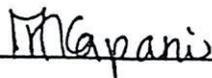
M.K. Chisunka
CONSTITUTIONAL COURT JUDGE



J. Z. Mulongoti
CONSTITUTIONAL COURT JUDGE



M. Z. Mwandenga
CONSTITUTIONAL COURT JUDGE



M. M. Kawimbe
CONSTITUTIONAL COURT JUDGE



K. Mulife
CONSTITUTIONAL COURT JUDGE