

**IN THE CONSTITUTIONAL COURT
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)**

2025/CCZ/002

**IN THE MATTER OF: ARTICLE 72 (2) (e) OF THE CONSTITUTION
OF ZAMBIA (AMENDMENT) ACT NO. 2 OF
2016**

**IN THE MATTER OF: ARTICLE 128 OF THE CONSTITUTION OF
ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016**

**IN THE MATTER OF: EFFECT OF THE EXPULSION OF A
MEMBER OF PARLIAMENT FROM A
POLITICAL PARTY**

**IN THE MATTER OF: EFFECT OF THE EXPULSION OF MILES
BWALYA SAMPA FROM THE PATRIOTIC
FRONT POLITICAL PARTY**

BETWEEN:

MORGAN NG'ONA

(Suing as Secretary General of the Patriotic Front)

PETITIONER

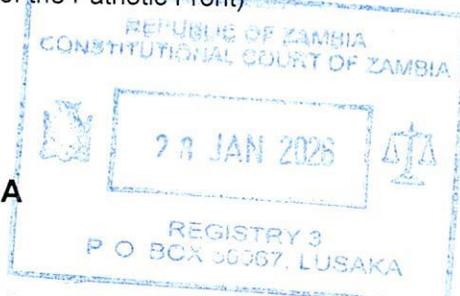
AND

ATTORNEY GENERAL

MILES BWALYA SAMPA

1ST RESPONDENT

2ND RESPONDENT



**CORAM: Munalula - PC, Musaluke, Chisunka, Mulongoti, Mwandenga, Kawimbe
and Mulife, JJC on 28th November, 2025 and 28th January, 2026**

For the Petitioner: Mr. T.B. Munalula – Messrs. Munati Chambers.

For the 1st Respondent: Mr. C. Mulonda, Deputy Chief State Advocate, Mr. N. Mwiya, Principal State Advocate, Mrs. P.M. Kalisilira, Senior State Advocate, and Mr. B. Mwanza, State Advocate – Attorney General's Chambers.

For the 2nd Respondent: Mr. D. Musonda – Messrs. Mulilansolo Chambers.

JUDGMENT

Chisunka, JC, delivered the Judgment of the Court.

Cases referred to:

1. Dipak Patel v Minister of Finance and Attorney General, 2020/CCZ/005
2. Chishimba Kambwili v Attorney General, 2019/CCZ/009
3. Cuthbert Tapuwanashe Chawira and Others v Minister of Justice Legal Affairs and Parliamentary Affairs and Others, Judgment No. CCZ 3/2017 (Constitutional Court of Zimbabwe)
4. Ronald Kaoma Chitotela and 8 Others v Miles Bwalya Sampa and 2 Others, 2023/CCZ/0028
5. Foveros Mining Zambia Limited v Bell Equipment Zambia Limited, CAZ, Appeal No. 115 of 2018
6. Sandras Samakayi v Attorney General, 2023/CCZ/0015
7. Felix Mutati and Others v Winnie Zaloumis (suing in her capacity as acting National Secretary for the Movement for Multiparty Democracy), SCZ Selected Judgment No. 31 of 2018
8. The People v Attorney General (Ex-Parte Nickson Chilangwa), 2024/CCZ/R001

Legislation referred to:

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

The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia

The Electoral Process Act No. 35 of 2016

Introduction

1. Morgan Ng'ona, the Petitioner, filed this amended Petition on 21st July, 2025 against the Attorney General as the 1st Respondent and Mr. Miles Bwalya Sampa as the 2nd Respondent (collectively, the "Respondents"). The gravamen of the Petition is that the failure by the Speaker of the National Assembly to declare the Matero Constituency parliamentary seat vacant, following the expulsion of the 2nd Respondent from the Patriotic Front ("PF"), contravened Article 72(2)(e) of the Constitution of Zambia, as amended by Act No. 2 of 2016 ("the Constitution").
2. In the Petition, the Petitioner seeks the following relief:
 - i. **A declaration that the failure of the Speaker of the National Assembly to declare the Matero Constituency Parliamentary seat vacant was in direct contravention of Article 72(2)(e) of the Constitution of Zambia;**
 - ii. **An Order directing the Speaker of the National Assembly to immediately declare the Matero Constituency Parliamentary seat vacant and to immediately notify the Electoral Commission of Zambia;**
 - iii. **Costs; and**
 - iv. **Any other relief the Court may deem fit.**

Petitioner's Case

3. According to the Petition and the affidavit verifying facts, the 2nd Respondent is the Member of Parliament ("MP") for Matero Constituency and former President of the PF. The Petitioner avers that the 2nd Respondent was expelled from the PF by the party's Central Committee on 3rd July, 2024.
4. The Petitioner further avers that following the expulsion, he notified the Speaker of the National Assembly ("the Speaker") on 3rd and 4th July, 2024 and again on 11th November, 2024, but that despite such notification, the Speaker failed to take action to declare the seat vacant.
5. In his skeleton arguments, the Petitioner submits that the Constitution is the supreme law of the land and binds all persons and authorities. Any failure to act in accordance with its provisions amounts to a wilful refusal to uphold the Constitution. Reliance is placed on Article 1(1) of the Constitution and the case of **Dipak Patel v Minister of Finance and Attorney General.** ⁽¹⁾
6. The Petitioner argues that Article 72(2)(e) and (8) of the Constitution provides that the office of MP becomes vacant upon expulsion from the sponsoring political party and that the Speaker is required to

notify the Electoral Commission of Zambia (“ECZ”) of such vacancy within seven days. It is contended that the 1st Respondent failed to comply with this constitutional procedure.

7. The Petitioner further contends that Article 72(5) of the Constitution only shields an expelled MP from vacating their seat where the expulsion is actively challenged in court. In the present case, the Petitioner argues that the 2nd Respondent has not deliberately or properly challenged his expulsion and, consequently, the Speaker’s inaction contravenes Article 72(2)(e) of the Constitution.

1st Respondent’s Case

8. The 1st Respondent filed an Answer, as amended on 28th July, 2025, together with an affidavit sworn by Mr. Stephen Chilufya Kawimbe, Deputy Clerk for Procedure at the National Assembly, and skeleton arguments.
9. The substance of the 1st Respondent’s case is that although the Speaker was notified of the alleged expulsion on 4th July, 2024, she was subsequently informed, by letter dated 15th July, 2024, of proceedings in the High Court under cause number 2024/HP/0938 in which the 2nd Respondent challenged his expulsion by way of counterclaim. In light of the pending court proceedings, the Speaker

advised that she could not take further action until the matter was concluded.

10. The 1st Respondent submits that pursuant to Article 72(5) of the Constitution, an MP does not lose his or her seat until the expulsion is confirmed by a court. Reliance is placed on **Chishimba Kambwili v Attorney General** ⁽²⁾ and Article 266 of the Constitution to support the submission that the High Court is the court of competent jurisdiction to determine such challenges.
11. It is further argued that the Petition raises no ripe constitutional question, is premature, offends the doctrine of comity of courts, and constitutes an abuse of court process. Reliance is placed on the cases of **Cuthbert Tapuwanashe Chawira and Others v Minister of Justice, Legal Affairs and Parliamentary Affairs and Others** ⁽³⁾ and **Ronald Kaoma Chitotela and 8 Others v Miles Bwalya Sampa and 2 Others** ⁽⁴⁾.

2nd Respondent's Case

12. The 2nd Respondent opposed the Petition by filing an Answer and affidavit on 29th July, 2025. He avers that he is the duly elected MP for Matero Constituency and was elected President of the PF on 24th October, 2023.

13. The 2nd Respondent states that he appointed the Petitioner as PF Secretary General on 28th October, 2023, but relieved him of those duties on 30th June, 2024. He further avers that on 2nd July, 2024, he dissolved the PF Central Committee pursuant to powers conferred by the party constitution.
14. According to the 2nd Respondent, the Petitioner instituted High Court proceedings on 3rd July, 2024 challenging the dissolution of the Central Committee. Thereafter, a purported expulsion by the dissolved Central Committee was publicised and notified to the Speaker, prompting the 2nd Respondent to file a counterclaim challenging the legality of the purported expulsion.

Petitioner's Reply

15. The Petitioner filed affidavits in reply disputing that the counterclaim in cause number 2024/HP/0938 constitutes a challenge to the expulsion contemplated under Article 72(5) of the Constitution. The Petitioner maintains that the issues before the High Court are distinct from those raised in the Petition.

The Hearing

16. At the hearing, Counsel for the Petitioner, Mr. Munalula, relied on the amended Petition, affidavits, and skeleton arguments. Counsel urged the Court to provide guidance on the time period within which an expelled MP must challenge an expulsion by invoking section 36 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia.
17. Counsel for the 1st Respondent, Mr. Mulonda, submitted that Article 72(5) of the Constitution prescribes no specific form of challenge and that a counterclaim is a claim in its own right, relying on **Foveros Mining Zambia Limited v Bell Equipment Zambia Limited**.⁽⁵⁾
18. Mr. Mwiya, also for the 1st Respondent, argued that the issue of a reasonable time period was not pleaded and that this Court should not read words into the Constitution, relying on **Sandras Samakayi v Attorney General**.⁽⁶⁾
19. Counsel for the 2nd Respondent, Mr. Musonda, submitted that the Speaker was constitutionally barred from declaring the seat vacant pending determination of the counterclaim, relying on **Felix Mutati and Others v Winnie Zaloumis**.⁽⁷⁾

Consideration and Decision

20. We have carefully considered the Petition, Answer, affidavits, submissions, and authorities. The reliefs sought are predicated upon the existence of a vacancy in the office of MP for Matero Constituency.
21. The sole issue for determination is whether the Speaker's failure to declare the seat vacant contravened Article 72(2)(e) of the Constitution.
22. Article 72(2)(e) of the Constitution provides that the office of MP becomes vacant where the member is expelled from the political party which sponsored the member for election. However, Articles 72(5),(6), and (7) of the Constitution establish a constitutionally mandated review process by the courts before such vacancy crystallises.
23. As this Court stated in **The People v Attorney General (Ex parte Nickson Chilangwa)** ⁽⁸⁾ the Constitution deliberately subjects expulsions under Article 72(2)(e) of the Constitution to a constitutional review, and the vacancy arises either upon expiry of the prescribed period for challenge or upon determination of that review by a court.

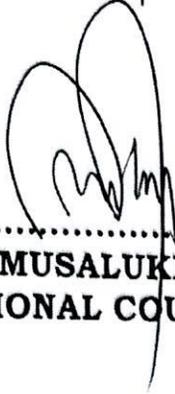
24. Article 266 defines “court” as a court of competent jurisdiction. Section 96 of the Electoral Process Act No. 35 of 2016 expressly vests jurisdiction in the High Court to determine questions relating to vacancy of a parliamentary seat.
25. The record shows that the 2nd Respondent filed a counterclaim in the High Court challenging his expulsion. Whether that challenge was mounted within the prescribed time or is otherwise competent is a matter for determination by the High Court. This Court cannot preempt or usurp that process.
26. In the absence of a final determination by the High Court confirming the expulsion, no vacancy has arisen under Article 72(2)(e) and (7) of the Constitution.
27. Accordingly, we find that the Speaker did not contravene Article 72(2)(e) of the Constitution by refraining from declaring the Matero Constituency parliamentary seat vacant.

Conclusion

28. For the foregoing reasons, the Petition is devoid of merit.
29. We therefore order as follows:

29.1. The Petition is dismissed.

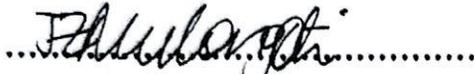
29.2. Each party shall bear its own costs.



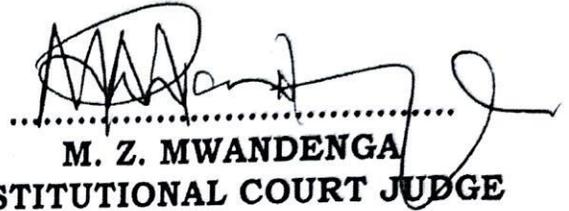
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M. MUSALUKE
CONSTITUTIONAL COURT JUDGE



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M. K. CHISUNKA
CONSTITUTIONAL COURT JUDGE



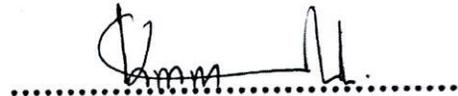
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J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE



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M. Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE



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M. M. KAWIMBE
CONSTITUTIONAL COURT JUDGE



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K. MULIFE
CONSTITUTIONAL COURT JUDGE

Munalula, PC, dissenting:

Cases referred to:

1. People v Attorney General (*Ex parte* Nickson Chilangwa) 2024/CCZ/R001
2. Moses Sakala v Attorney General, Morgan Ng'ona and Brian Mundubile 2023/CCZ/0025
3. Chishimba Kambwili v Attorney General 2019/CCZ/009

Legislation referred to:

Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

Electoral Process Act No. 35 of 2016

30. In our Ruling of 6th November, 2025, we declined a Notice of Motion at the behest of the 2nd Respondent to have this Petition dismissed on points of law under Orders 14A and 33 (7) of the Rules of the Supreme Court (White Book).

31. We specifically dismissed the claim in the Motion, that the Petition relates to the expulsion of a Member of Parliament (a matter reserved for the High Court) by holding that the Petition does not challenge the expulsion itself but the Speaker's alleged inaction following the communication of an expulsion. In other words, the question was whether the failure to act contravened the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (henceforth "the Constitution").

32. We then proceeded to hear the Petition. However, the Judgment that followed is that of the Majority as I am constrained to dissent to paragraphs 25, 26, 27 and 28. I do so because in my considered view, whether the Speaker contravened the Constitution by refusing to act on a communicated expulsion is a question which can be answered without the conclusion of a process under Article 72 (5) (6) and (7) read with section 96 of the Electoral Process Act No. 35 of 2016 (henceforth the EPA). Let me elaborate on how I came to this position.

33. To begin with, it is trite that this Court settles principles. Thus, the petition, regardless of its merits, is an opportunity to settle the principle stating the Speaker's role when he or she receives communication that a Member of Parliament has been expelled by the sponsoring political Party. Settling the principle does not affect the matter before the High Court as it provides constitutional clarity. Accordingly, it is in the interest of justice, pragmatism and good order that the matter before us is settled.

34. Secondly, the Petitioner alleges the following constitutional violation:

That the failure of the Speaker of the National Assembly to declare the Matero Constituency Parliamentary seat vacant following the expulsion of Mr Miles Bwalya Sampa from membership of the Patriotic Front and their receipt of notification of the same is contrary to Article 72 (2) (e) of the Constitution of Zambia as amended by Act No. 2 of 2016.

35. The allegation being that Article 72 (2) (e) has been contravened, it falls squarely within the jurisdiction of this Court as provided in Article 128 (3) (c) which reads:

Subject to Article 28(2), a person who alleges that –

an act, omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.

36. The allegation accuses the Speaker of failing to perform a function of the Speaker's office which is to declare a seat vacant upon the expulsion of its occupant from the Party that sponsored their election to the office of Member of Parliament. In order to address the allegation, I will begin by setting out the relevant portions of Article 72:

72 (2) (e) The office of a Member of Parliament becomes vacant if the member – is expelled from the political party which sponsored the member for election to the National Assembly.

72 (5) Where a Member of Parliament is expelled as provided in clause (2) (e), the member shall not lose the seat until the expulsion is confirmed by a court, except that where the member does not challenge the expulsion in court and the period prescribed for challenge lapses, the member shall vacate the seat in the National Assembly.

72(6) Where a court determines that an expulsion of a member, as provided in clause (2)(e), was not justified, there shall be no by-election for that seat and the member shall opt to-

(a) Remain a member of the political party and retain the seat or

(b) Resign from the political party and retain the seat as an independent member.

72(7) Where a court determines that an expulsion of a member, as provided in clause (2)(e), was justified, the member shall vacate the seat in the national Assembly.

72(8) Where a vacancy occurs in the National Assembly, the Speaker shall, within seven days of the occurrence of the vacancy, inform the Electoral Commission of the vacancy, in writing, and a by-election shall be held in accordance with Article 57. (*emphasis added*)

37. When read as a whole, Article 72(2)(e), (5), (6), (7) and (8) provide clarity on the meaning and intent of Article 72 (2) (e). The gist of Article 72(5), (6) and (7) is to qualify 72 (2)(e) and provide that a member of Parliament who has been expelled from their Party may or may not vacate their seat. If they do vacate the seat it will be in one of two ways or scenarios. They will either vacate it because they do not challenge their expulsion from the Party within the prescribed time or because a court of competent jurisdiction confirms the validity of the expulsion.

38. In the first scenario, vacation of the seat arises from effluxion of the prescribed time. The effluxion of time without any court challenge means that the vacancy is triggered by law at the moment that the time within which a challenge may be made runs out. In the second scenario the vacation of the seat arises from the decision of the High Court upon conclusion of the constitutional review process.

39. The Petitioner contends that the Speaker has been constitutionally delinquent by failing to act on the expulsion communicated by the Party. This

claim is a misapprehension of the Speaker's specific role in the "declaration" of a vacancy after receiving a communication that a Member of Parliament has been expelled from their political Party.

40. The misapprehension is to assume that the Speaker acts on a Party's instruction. Further, that the Speaker has the power to make the declaration sought. The Petitioner's claim assumes quite incorrectly that the incumbent Speaker has refused to act when there is no constitutional provision instructing her to act until the vacancy is a *fait accompli* through other events outside of the Speaker's control.

41. It is in clause (8) of Article 72 that the Speaker surfaces making it clear that the Speaker is not privy to the process of vacating the seat. He or she has no discretion or power to declare the seat vacant upon receipt of the communication from the Party that has expelled its member. It is after the fact of the vacancy has occurred, that the Speaker communicates the fact of the vacancy to the ECZ.

42. The Constitution uses the word "inform" to frame the Speaker's role. It does so because of the nature of the function involved. The Constitution thus directs the Speaker to act as a conduit of information. He or she is obliged to inform the ECZ (and thereby the People) of the existence of the

fact of a vacancy. In my considered view therefore, the Speaker performs a duty. Here is why.

43. Under Article 266 of the Constitution the term “function” relates to two categories. Thus, there are “powers” and there are “duties”. Article 266 not only draws this distinction but also explains that “powers” include “privilege, authority and discretion”. It is trite that duties are obligations performed in the course of one’s job. An instruction to inform carries no element of power. It is therefore a duty.

44. The Speaker’s function in Article 72 is to “perform a duty” rather than to “exercise a power”. Article 266 is helpful in settling the issue and in strengthening my conclusion that the Speaker’s role is circumscribed by the Constitution into a mechanical one. Article 72(8) does not give the Speaker power to declare a seat vacant upon receipt of a letter of expulsion.

45. As the Speaker performs a duty rather than exercises a power, it follows that the claim in common parlance that the “Speaker declares a seat vacant” is unsupported by the text of the Constitution nor does it elevate the duty framed by the Constitution to a power.

46. This Court has already had occasion in the case of the **People v Attorney General (Ex parte Nickson Chilangwa)**¹, to settle the role of the

Speaker in Article 72. Therein, the full Court ruled that the Speaker merely verbalises or pronounces a vacancy which arises by operation of law.

47. The Court, by way of *obiter dicta* touched on a vacancy such as the one in *casu* and stated that it must be preceded by either the effluxion of prescribed time or the Court's rendering of its decision confirming the expulsion before the Speaker can make the announcement that triggers the consequential by-election. It said:

Article 72 (5), (6) and (7) provides for constitutional review and spells out the manner and time within which it should unfold. It must be instituted before the expiry of a stipulated grace period. The vacancy is thus triggered by the expiry of the grace period, or where applicable, the court's determination of the expulsion review proceedings.

48. That the Speaker's functions may be confined to the performance of duties as opposed to exercising powers, tallies with what we said in **Moses Sakala v Attorney General, Morgan Ng'ona and Brian Mundubile²** that

...the Speaker's only responsibility is to receive in writing the name of the person who has been elected as leader of the opposition ...

49. In *Ex parte Nickson Chilangwa¹*, the full Court thus said:

The automatic triggering of the vacancy and by-election by operation of law takes the decision as to whether a vacancy has arisen and a by-election should follow out of the hands of those involved in the administration of elections. A seat is vacated and a by-election triggered not by the decisions or actions of the Electoral Commission of Zambia (ECZ) and the Speaker but

by operation of law. The ECZ and Speaker's roles are therefore mechanical. They announce a vacancy which has already occurred and conduct the related by-election which has also already been set in motion by the Constitution and the law.

50. By way of concluding, I find it important that I elaborate further on why the Speaker is relegated to performing a duty. As we stated in *Ex parte Nickson Chilangwa*¹, a Member of Parliament is elected directly by the people and his or her vacation of their seat in Parliament is equally of direct concern to the People. The People's sovereignty over the security of tenure of those whom they choose to represent them in their own National Assembly is evident in the constitutional process which must be concluded before a seat is vacated.

51. Thus, if a Party for whatever reason chooses to expel a Member of Parliament from the Party the vacation of the Parliamentary seat does not follow automatically. The Member of Parliament is given time within which to challenge the expulsion. Further, where challenged, the expulsion must be independently confirmed by the High Court. This ensures that politically motivated expulsions are constitutionally prevented.

52. Furthermore, this constitutional safeguard shields the Speaker from allegations that he or she has failed to act on the decision of a sponsoring

political Party as mandated by Article 72 (2) (e) and from perceptions of partiality in matters that relate to security of tenure of members of Parliament.

53. This clarity is important because this Court held in **Chishimba Kambwili v Attorney General**³, that the Speaker breached the Constitution by declaring the Roan Constituency seat vacant after finding that the incumbent Member of Parliament had crossed the floor. The Court said:

...it is our firm view that the question whether or not the petitioner had crossed the floor thereby resulting into the nullification of his seat in Parliament is not an internal or procedural matter...

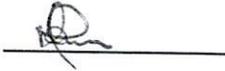
We went on to hold that the finding of the Speaker that a vacancy had occurred could effectively shut out the remedies which the Petitioner could have accessed under Article 72 (5), (6) and (7) of the Constitution.

54. Returning to the matter at hand, the sum of my opinion is that the petition is based on a misapprehension of Article 72. The Speaker's positive duty to inform of a vacancy arises from the conclusion of constitutional imperatives which settle the vacancy and not from the initial expulsion by the Party, as the expulsion may be reversed by subsequent court order.

55. My position is premised on my understanding of the Speaker's role as framed in Article 72 when it is read as a whole and in conjunction with other

relevant provisions of the Constitution. It is this premise that led me to the firm conclusion that the petition is based on a misapprehension of Article 72 (2) (e), making the relief sought untenable. I thus concluded that the petition ought to be dismissed regardless of the constitutional review process in Article 72 (5) (6) and (7) and regardless of the counterclaim or any other litigation before the High Court.

56. I would also make no order as to costs.



M. M. Munalula (JSD)

Constitutional Court President