

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

2025/CCZ/0023

IN THE MATTER OF: THE HIGH COURT OF ZAMBIA'S EXERCISE OF UNLIMITED JURISDICTION IN CIVIL MATTERS

IN THE MATTER OF: THE DECISION OF THE HIGH COURT OF ZAMBIA CAUSE NO. 2025/HPC/0640

IN THE MATTER OF: ARTICLE 1(2), 1(5), 128(1) AND 134 OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

BETWEEN:

BRIGADE CONSTRUCTION LIMITED	1 st APPLICANT
MADHU MOHAN REDDY PITCH	2 nd APPLICANT
CHETAN REDDY PITCH	3 rd APPLICANT

AND

THE ATTORNEY GENERAL	RESPONDENT
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CORAM: Shilimi DPC, Musaluke, Chisunka, Mwandenga, Kawimbe, JJC on 13th and on 24th February, 2026.

For the Applicants: Mr. M. Lisimba of Messrs Mambwe, Siwila & Lisimba Advocates and Mr. T. Sapato of Messrs Lewis Nathan Advocates

For the Respondent: Mr. C. Watopa – Principal State Advocate, Mr. C. Simusa – Assistant Senior State Advocate, Mr. K. Sakachiwa – State Advocate & Mr. A.B. Isiteketo – State Advocate

JUDGMENT

Kawimbe JC, delivered the Judgment of the Court

Cases referred to:

1. Zambia National Holdings Ltd v United National Independence Party and Another, SCZ Judgment No. 3 of 1994

2. Polythene Products (Z) Limited v Peter Zimba and Another, SCZ Appeal No. 177 of 2015
3. Twampane Mining Co-operative Society Limited v E&M Storti Mining Limited SCZ Judgment No. 20 of 2011
4. NFC Africa Mining Plc v Techro Zambia Limited, SCZ Judgment No. 22 of 2009
5. Isaac Mwanza v The Attorney General 2021/CCZ/0045
6. Institute of Law, Policy Research and Human Rights Limited v The Attorney General and Brian Mundubile 2023/CCZ/0024
7. The People v Justin Simukonda 2020/CCZ/R002
8. David Namukombo v The Attorney General and Another 2016/CC/003
9. Jayesh Shah v The Attorney General 2025/CCZ/0012

Legislation referred to:

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

The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

Court of Appeal Act No. 7 of 2016

High Court Act, Chapter 27 of the Laws of Zambia

High Court (Amendment) Rules, Statutory Instrument No. 58 of 2020

Other works referred to:

1. Zukerman on Civil Procedure: Principles of Practice by Adrian Zuckerman, 3rd Edition, Sweet and Maxwell and Thomson Reuters, London, UK (2011)

[1] INTRODUCTION

- [1.1] On 9th October, 2025, the applicants filed an originating summons supported by an affidavit, list of authorities, and skeleton arguments. These were later supplemented by an affidavit in reply, list of authorities, and skeleton arguments dated 17th December, 2025. Through this summons, the applicants invite the Court to determine the following question:

Whether the High Court's unlimited jurisdiction in civil matters under Article 134 of the Constitution extends to making orders that restrict a party's ability to file interlocutory applications, and whether such orders are consistent with the constitutional right to a fair hearing.

[2] THE APPLICANTS' CASE

- [2.1]** The applicants' case is grounded in their affidavit in support of the originating summons and skeleton arguments, which disclose that sometime in July, 2025, MMRP Mining Company Limited, Green Capital Holdings Limited and Raju Poosapati Sita Ramachandra (the plaintiffs) commenced an action in the High Court against the applicants (therein defendants under Cause No. 2025/HPC/0640), seeking among other relief, declarations relating to the alleged forfeiture of shares and management of the 1st applicant.
- [2.2]** The plaintiffs also sought interim relief against the applicants and the High Court granted them an order of interim injunction. Contempt proceedings were later commenced against the applicants, who challenged them by way of raising a preliminary objection. The applicants also sought an interpretation of that court's ruling dated 11th August, 2025 which they allege remains unheard.
- [2.3]** That during the contempt proceedings, the High Court dismissed the applicants' preliminary objection and issued an order for directions,

which the applicants argue effectively bars them from filing further interlocutory applications and thereby restricting their right to a fair hearing.

[2.4] The applicants contend that the matter before this Court does not seek to challenge the correctness or propriety of the High Court's order as a matter of appellate review, but rather is intended to question the constitutionality of the High Court's order. It is the applicants' view that given the background, this matter falls exclusively within the jurisdiction of this Court and that they are rightly before it.

[2.5] The applicants further contend that an appeal to the Court of Appeal is inadequate and incapable of resolving this matter because the issue raised therein is not one of legal or factual error but of constitutional validity. In the result, that any attempt to conflate appellate jurisdiction with constitutional jurisdiction would undermine the distinction between challenging a judicial decision and constitutional validity.

[2.6] In that view, the applicants invite this Court to interpret Article 134 of the Constitution, Chapter 1 of the Laws of Zambia as amended by Act No. 2 of 2016 (the Constitution) in order to determine whether the

High Court's unlimited jurisdiction in civil matters extends to making orders that restrict a party's constitutional right to a fair hearing.

- [2.7] In their skeleton arguments, the applicants submit that the orders made by the High Court in Cause No. 2025/HPC/0640, which prohibit them from making any interlocutory applications, violate their constitutionally protected right to a fair hearing in civil proceedings under Article 18(9) of the Constitution.
- [2.8] The applicants also submit that while Article 134 of the Constitution grants the High Court unlimited and original jurisdiction in civil matters, it does not entail that the court has power to make orders that prevent a party from filing interlocutory applications, in a bid to undermine the right to a fair hearing. Reliance for their argument is placed on the case of **Zambia National Holdings Limited v United National Independence Party and Another**¹, where the Supreme Court held that the High Court's jurisdiction is "unlimited but not limitless" and must be exercised in accordance with the law.
- [2.9] The applicants further submit that since the High Court's jurisdiction under Article 134 of the Constitution is circumscribed by the Constitution, then there is an obligation on that court to exercise its power in a manner that upholds fundamental rights, including the right to a fair hearing. In consequence that interlocutory applications which

are an integral part of civil proceedings should not be restricted because preventing a party's right to file such applications could undermine the fairness of the process.

[2.10] In reply to the respondent's contention that the matter is improperly before this Court, the applicants submit that the respondent has misconceived their issue because what is in contention is not the High Court's order which can be appealed but rather the validity of the subject High Court order.

[2.11] As far as the applicants are concerned, this Court under Article 128(1)(a), (b), and (e) of the Constitution has exclusive jurisdiction to hear constitutional matters and there is no need for a litigant to approach this Court before exhausting appellate remedies where a constitutional question has arisen. Thus, the applicants are properly before this Court.

[3] THE RESPONDENT'S CASE

[3.1] In opposing the summons, the respondent on 3rd December, 2025 filed an affidavit supported by skeleton arguments and list of authorities. The affiant of the affidavit, Chinyama Simuusa, Assistant Senior State Advocate, deposes that the applicants' matter is improperly and irregularly before this Court. That the applicants,

being dissatisfied with the High Court's order, should have lodged an appeal to the Court of Appeal instead of instituting this action.

[3.2] In the skeleton arguments, the respondent relied on section 10 of the High Court Act, Order 3 rule 2 of the High Court Rules and Order XIX Rule 3(2)(e) of the High Court (Amendment) Rules, Statutory Instrument No. 58 of 2020 to demonstrate that the High Court has power to make interlocutory and procedural orders as part of its inherent case management function as follows:

10. The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the Criminal Procedure Code, or by any other written law, or by such rules, orders or directions if the Court as may be made under this Act, or the said Code, or such written law, and in default therefor, in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

Order 3 rule 2

Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.

Order XIX rule (3)(2).

A judge may, in addition to any other general power, exercise the following powers at a scheduling conference:

(a) make any procedural order.

[3.3] To buttress the argument, the respondent adverted to the learned author **Adrian Zuckerman** on **Zukerman on Civil Procedure: Principles of Practice, 3rd Edition, (2011)** at page 567 where he observes that:

The power to make such orders is not new. It has always been one of the principal instruments by which the Court controls its proceedings. Now that the Court has a responsibility for effectively managing cases, the 'unless order' assumes a more prominent role, since it can be used to prevent recalcitrant parties from defeating the Court's efforts to implement the overriding objective.

[3.4] In the view of the cited authorities, the respondent argued that the High Court has power to make orders either on its own motion or upon application by a party, as part of its inherent case management function. That in exercising such power, the court's objective is to ensure the orderly and efficient administration of justice. As such, the High Court order which is in contention in this matter results from proper use of jurisdictional power and does not amount to constitutional contravention. Consequently, that proper recourse which was available to the applicants was to lodge an appeal against that order to the Court of Appeal under section 12 of the Court of Appeal Act No. 7 of 2016.

[3.5] Further cited in support of the respondent's position were the Supreme Court cases of **Polythene Products (Z) Limited v Peter Zimba and Another²**, **Twampane Mining Co-operative Society Limited v E&M Storti Mining Limited³**, and **NFC Africa Mining Plc v Techro Zambia Limited⁴**, which all affirm the importance of litigants adhering to procedural rules, which they are bound by.

[3.6] In concluding, the respondent prayed that the originating summons be dismissed with costs.

[4] HEARING

[4.1] The matter came up for hearing on 10th February, 2026 and the parties relied on their respective positions as stated in their affidavits, list of authorities and skeleton arguments. In orally augmenting their respective cases, counsel for the parties rehashed the arguments already on record, which will not be produced.

[5] ANALYSIS AND DETERMINATION

[5.1] We have considered the originating summons, the parties' evidence, the arguments tendered in support and in rebuttal to the issue raised herein and opposing counsel's submissions.

[5.2] We begin by stating that the Court's power to interpret the Constitution is provided in Article 128(1)(a) of the Constitution, as follows:

128. (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear-

(a) a matter relating to the interpretation of this Constitution; ...

[5.3] This means that the Court has jurisdiction to adjudicate matters involving constitutional interpretation, save for those limited by Article 28 of the Constitution.

[5.4] In view of this, the principles that govern matters concerning the interpretation of the Constitution brought by way of originating summons have been laid down in a plethora of authorities, such as, the case of **Isaac Mwanza v The Attorney General**,⁵ where we stated that:

Our summation of the principles established by our jurisprudence and applicable to the use of the originating summons for purposes of interpreting constitutional provisions is as follows. First, the issues raised, must relate solely or exclusively to interpretation of constitutional provisions. Secondly, the questions must be of a general nature avoiding personalisation. Thirdly, they should be prospective in their effect, thereby guiding future conduct or decision making. Fourthly, they should not contain contentious matters which necessitate a proper trial in order

to settle the facts and/or the law. Finally, there must be legitimate purpose for interpretation.

[5.5] Further, in the case of **Institute of Law, Policy Research and Human Rights Limited v The Attorney General and Brian Mundubile⁶**, the Court stated that:

... the question of whether a matter is fit for sole or abstract interpretation goes beyond its mere framing or commencement under the said provision. Accordingly, it is not enough for a party to formulate questions and move this Court under Article 128(1)(a) of the Constitution or Order IV rule (2)(2) of the Rules. The questions they raise must be fit for this Court to engage in the process of abstract interpretation of the related provisions of the Constitution. With the foregoing in mind, we look not just at the framing and wording of the questions in issue, but also at their context and the net effect of their determination in order to settle the competence of the interpretation sought.

[5.6] It is clear from the foregoing, that before proceeding to engage its interpretative jurisdiction, the Court will consider the content and net effect of the interpretation sought. In addition, the Court will also consider whether a matter brought for constitutional interpretation raises legitimate purpose based on the authorities cited above.

[5.7] That being said, Article 28 of the Constitution which subjects our jurisdiction under Article 128 relevantly provides that:

28. (1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being

or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall –

(a) hear and determine any such application;

(b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2); and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

(2) ...

(b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court:

Provided that no appeal shall lie from a determination of the High Court under this Article dismissing an application on the ground that it is frivolous and vexatious.

[5.8] Succinctly stated, Article 28 of the Constitution hosts the enforcement mechanism of the Bill of Rights in Zambia. This means that where a person alleges that any of the rights enshrined in Articles 11 to 26 of the Constitution have been, are being or are likely to be contravened, a person may move the High Court as the court of first instance to enforce the Bill of Rights. A person who is dissatisfied with the decision of the High Court is at liberty to lodge an appeal before the Supreme Court as the sole appellate court in matters concerning the Bill of Rights. This insight into the constitutional framework is

imperative because it predicates the determination of the matter before us.

[5.9] The question we are being invited to determine by the applicants, is whether Article 134 of the Constitution, which grants the High Court unlimited jurisdiction in civil matters, permits the court to make orders that restrict a party in a manner inconsistent with the constitutional right to a fair hearing.

[5.10] For their part, the applicants argue that the orders made by the High Court in Cause No. 2025/HPC/0640 prohibiting them from making any interlocutory applications before that court violates their constitutionally protected right to a fair hearing in civil proceedings. Additionally, they argue that Article 134(a) of the Constitution which grants the High Court unlimited and original jurisdiction in civil matters is not intended to confer power upon it, which limits constitutionally protected rights, such as, the right to be heard in civil matters under Article 18(9) of the Constitution.

[5.11] The respondent's answer and brief contention is that the applicants' case is improperly and irregularly before this Court because it involves a High Court order, which the applicants are merely dissatisfied with. That their recourse lies in lodging an appeal before

the Court of Appeal instead of mounting an action before this Court, which in truth, raises no constitutional issue.

[5.12] What we must determine therefore, is whether the applicants can rely on Article 18(9) of the Constitution in seeking a determination that the High Court exceeded its jurisdiction under Article 134 of the Constitution in Cause No. 2025/HPC/0640. This is not the first time that the Court will be addressing the interface between the Bill of Rights and other provisions of the Constitution and ultimately what is entailed by subjection of this Court's jurisdiction under Article 128(1) of the Constitution.

[5.13] To this effect, we affirm what we stated in the case of **The People v Justin Simukonda**⁷, that even though this Court has jurisdiction to interpret any provision in the Constitution, that power is limited by the subjection of Article 128 to Article 28 of the Constitution, which grants the High Court and Supreme Court jurisdiction to determine any matter within the Bill of Rights. Article 266 of the Constitution defines the Bill of Rights as:

'Bill of Rights' means the human rights and fundamental freedoms set out in Part III, and includes their status, application, interpretation, limitations, derogations, non-derogations and enforcement.

[5.14] Accordingly, this Court has no jurisdiction to determine any matter that falls under the Bill of Rights because that power is specifically granted by the Constitution to the High Court and on appeal to the Supreme Court. In simpler terms, the Constitutional Court's jurisdiction covers all provisions in the Constitution except for those under the Bill of Rights, which encapsulates Articles 11 to 26 of the Constitution wherein Article 18(9), which is at the crux of this originating summons lies.

[5.15] As we held in the case of **Davison Namukombo v The Attorney General and Another**⁸ that until Part III of the Constitution which contains the Bill of Rights is amended after a referendum, matters relating to the contravention of Articles 11 to 26 will continue to be determined by the High Court.

[5.16] From the context of the interpretation sought, it can be deduced from the factual basis of this matter that the applicants are merely dissatisfied with an order that was made by the High Court Judge. In our view, what they ought to have done, was to channel their grievance through an appeal to the Court of Appeal as there exists no constitutional route from the High Court to the Constitutional Court on matters that concern the Bill of Rights.

[5.17] Consequently, we find that the applicants' originating summons does not raise any legitimate question fit for this Court's interpretation through its context and intended effect. Being represented by advocates, we expected that they would have provided proper counsel to the applicants but this was clearly not done.

[5.18] We frown upon this action because a challenge to a High Court order or any other court exercising civil jurisdiction has no place in this Court, a position we stated in the case of **Jayesh Shah v The Attorney General**⁹ that:

We take this opportunity to state that litigants who are dissatisfied with portions of a judgment or ruling of any court are not at liberty to turn such grievance into constitutional questions. This would bring chaos to the operations of courts because judges or courts should not be fettered in exercising their judicial authority vested in them in Articles 118 and 119 of the Constitution as the petitioner is trying to do by unduly questioning the power of the Court of Appeal to adjudicate.

[5.19] It is therefore, the holding of this Court that the applicants' originating summons is not suitable for constitutional interpretation. Further, we find the applicants guilty of abusing the process of Court for what they seek is not a legitimate purpose for real constitutional interpretation but an attempt to evade compliance of a High Court order under Cause No. 2025/HPC/0640.

[6] FINAL ORDERS

[6.1] This matter is dismissed for lack of merit.

[6.2] We award the respondent costs to be borne by the applicants.



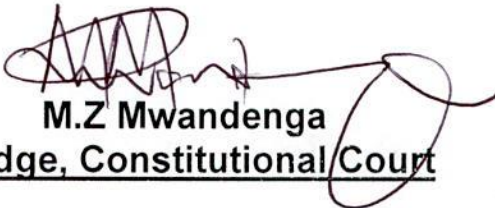
A. M Shilimi
Deputy President - Constitutional Court



M. Musaluke
Judge, Constitutional Court



M. K Chisunka
Judge, Constitutional Court



M.Z Mwandenga
Judge, Constitutional Court



M. Mapani-Kawimbe
Judge, Constitutional Court