

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA



10 FEB 2026



R1

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

2025/CCZ/0029

IN THE MATTER OF: ARTICLES 1, 2, 92, 128 AND 267 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016.

IN THE MATTER OF: THE ALLEGED CONTRAVENNTION OF ARTICLES 1(2) 5, 8, 9, 90, 91(3) 92 (1) 92 (2) (f) AND 92 (2) (j) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT No. 2 of 2016

IN THE MATTER OF: THE MISAPPLICATION OF ARTICLES 92(2) (F) AND 92(2) (J) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

IN THE MATTER OF: THE DECISION OF THE CONSTITUTIONAL COURT IN MUNIR ZULU AND ANOTHER V ATTORNEY GENERAL [2025] ZMCC 12(27 JUNE 2025)

IN THE MATTER OF: THE ESTABLISHMENT, COMPOSITION AND OPERATION OF THE TECHNICAL COMMITTEE ON AMENDMENTS TO THE CONSTITUTION APPOINTED BY HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF ZAMBIA ON 2 OCTOBER, 2025

BETWEEN:

LAW ASSOCIATION OF ZAMBIA

1ST PETITIONER

NON-GOVERNMENTAL ORGANISATIONS'
COORDINATING COMMITTEE FOR GENDER
AND DEVELOPMENT REGISTERED TRUSTEES

2ND PETITIONER

BISHOP ANDREW MWENDA (AS EXECUTIVE
DIRECTOR OF THE EVANGELICAL FELLOWSHIP
OF ZAMBIA

3RD PETITIONER

BISHOP EMMANUEL CHIKOYA (AS SECRETARY
GENERAL OF THE COUNCIL OF CHURCHES
IN ZAMBIA)

4TH PETITIONER

FATHER FRANCIS MUKOSA (AS SECRETARY
GENERAL OF THE ZAMBIA CONFERENCE
CATHOLIC BISHOPS)

5TH PETITIONER

LCK FOUNDATION LIMITED
AND

6TH PETITIONER

THE ATTORNEY GENERAL

1ST RESPONDENT

The Consortium of Civil Society Organisations on Governance
PARTY

1st INTERESTED

ERIC SAKALA

2nd INTERESTED PARTY

Coram: Munalula PC, Shilimi DPC, Musaluke, Chisunka, Mulongoti, Mwandenga, Mulife JJC on 10th February, 2026

For the Petitioners: Ms L. Kasonde from LCK Chambers

For the Respondent: Ms C. Mulenga Acting Chief State Advocate appearing with Ms M. Katoio Senior State Advocate and Ms B. Mwanza State Advocate from the Attorney General's Chambers

RULING

Munalula PC, delivered the Ruling of the Court.

Cases referred to:

1. Milingo Lungu v Attorney General and Administrator General 2022/CCZ/006
2. Biowatch Trust v Registrar, Genetic Resource CCT 80/08 2209 ZACC
3. John Sangwa v Attorney General 2021/CCZ/0035
4. Sean Tembo v Attorney General 2018/CCZ/007

Legislation referred to:

The Constitutional Court Act No. 8 of 2016

The Constitutional Court Rules Statutory Instrument No 37 of 2016

[1] This ruling relates to a Notice of Motion for leave to discontinue Petition pursuant to Order X rule 3 of the Constitutional Court Rules Statutory Instrument No 37 of 2016 (henceforth "the Rules"). The application is accompanied by an affidavit in support and skeleton arguments. In filing this application, the following orders are sought by the Petitioners:

- a. That the Petition herein be discontinued pursuant to Order X Rule 3 of the Rules.
- b. That the discontinuance be without any admission on the merits and without prejudice to the Petitioner's Constitutional Rights.

- c. **Such further or consequential directions as this Honourable Court may deem fit.**

[2] The affidavit of fact was sworn by Linda Chishimba Kasonde, Advocate of the High Court, who conducts her practice under LCK Chambers. She deposed that the Petitioners commenced a matter before this Court via Petition which is yet to be determined on the merits.

[3] That upon further consideration and upon instructions from her clients, a decision was reached not to proceed with the Petition. That the decision is voluntary, made in good faith and consistent with Order X Rule 3 of the Rules. That the Petitioners do not seek to secure any procedural or substantive advantage through the application nor is there any admission of liability or concession on the merits of the Petition.

[4] Further that, no prejudice will be occasioned to the Respondent by virtue of the application as there is no final determination in the main and that it is in the interests of justice, judicial economy and orderly case management that the main matter be discontinued in line with the provisions of Order X Rule 3 of the Rules.

[5] In the accompanying skeleton arguments, the Petitioners contend that Order X Rule 3 of the Rules clothes this Court with jurisdiction to discontinue proceedings as the Court may direct, where applicable. That this jurisdiction is

in addition to that conferred upon the Court under Article 128 of the Constitution and this Court's inherent jurisdiction.

[6] The Petitioners argue that a party that has commenced an action is at liberty to seek leave to discontinue the matter under Order X Rule 3 and that the same is not an abuse of court process. That the discretionary power under Order X Rule 3 is broad and ought to be exercised judicially and the application granted as there is no basis in law and fact for the application to be denied. The Petitioners prayed that this Court grants the application subject to such further or consequential orders as it may deem fit.

[7] Ms. Comfort Mulenga, the Acting Chief State Advocate in the Attorney General's Chambers, swore the opposing affidavit and deposed that the Respondent does not object to the Petitioners' application to discontinue the matter, however that they be condemned in costs.

[8] In the opposing skeleton arguments, the Respondent contends that this Court has the discretion to condemn a party in costs when considering applications for discontinuance or withdrawal. That the minority ruling in **Milingo Lungu v The Attorney General and Administrator General**¹ dated 8th July, 2024 and section 30 of the Constitutional Court Act No. 8 of 2016 (henceforth "the Act") speak to this.

[9] We were urged to condemn the Petitioners in costs owing to the fact that they desired to abandon the matter after the Respondent had complied with

Orders for Directions as it awaited a date for hearing the main matter. The Respondent cited the frivolous and vexatious nature of the Petition and Counsel's duty as an officer of the Court to diligently advise the client, to ensure that the Petition did not grace the record.

[10] It was further submitted that whilst African constitutional jurisdictions recognise the need to protect access to constitutional justice, that protection does not cover frivolous, vexatious, speculative or abusive proceedings. By way of persuasion, this Court was referred to the Constitutional Court of South Africa's decision in the case of **Biowatch Trust v Registrar, Genetic Resource**² in which the Court, whilst protecting *bona fide* litigants, expressly permitted costs orders where litigation was found to be frivolous or vexatious.

[10] When the application came up for hearing on 10th February, 2026, Ms Kasonde briefly augmented the written submissions by citing the case of **John Sangwa v Attorney General**³ wherein in paragraph 52 at page J23, we cited the factors that the South African constitutional Court will consider in awarding costs, namely, the conduct of the parties, the conduct of their legal representatives, the nature of the litigants and the proceedings. She further alluded to our Ruling of 16th December, 2025 which she opined, rendered continuance of the matter an academic exercise. The Respondent relied entirely on the written submissions.

[11] We have considered the application, the affidavit evidence and oral submissions. The Petitioners moved this Court seeking leave to discontinue the proceedings mainly on the ground that they no longer want to pursue the main matter which has not yet been heard on the substantive. The Respondent though not averse to the application asks this Court to condemn the Petitioners in costs because they did not withdraw the Petition, which is purportedly frivolous and vexatious, before the Orders for Direction were complied with.

[12] We begin with the applicable rule. The application was made pursuant to Order X Rule 3 of the Rules which provides that:

3. (1) A petitioner or an applicant may, at any stage before judgment, on notice to the Court and to the respondent, apply to discontinue a matter instituted under the Act.

(2) The Court may, subject to an order regarding costs, allow the discontinuance or withdrawal of the matter.

[13] The above provision clothes this Court with jurisdiction to grant leave to a petitioner or an applicant to discontinue a matter at any stage before Judgment. The Court may also take into consideration the issue of costs before allowing the discontinuance. The power conferred on the Court is clearly discretionary. Whether costs are to be granted or not is to be considered on a case by case basis.

[14] Thus, this Court stated in the case of **Sean Tembo v The Attorney General**⁴ that:

It is clear from the foregoing that an application to discontinue a matter can be made at any stage of the proceedings before judgment by way of notice to the Court and the other party. The Rules do not provide for the giving of reasons. Rather, the discontinuance is subject to the discretion of the Court and an order regarding costs. It is for the Court to decide whether to grant the application for discontinuance or to decline it in which case the Court is to give direction as to how the matter is to continue under trial. The Court has a discretion which is exercised on a case by case basis depending on the facts before it. However, the said discretionary power ought to be exercised judiciously and for good reason.

[15] Even though the Respondent contends that this application should have been made before compliance with Orders for Direction had taken place, an application under Order X Rule 3 can be made at any stage before Judgment.

[16] We are mindful that the Respondent also referred us to section 30 of the Act which gives this Court power to award costs. Section 30 of the Act provides that:

The Court has the discretion to award costs in any proceedings under this Act.

[17] This Court has had occasion to pronounce itself on the import of the above provision in the case of **John Sangwa v Attorney General**³ wherein we stated that:

section 30 of the CCA gives discretionary power to this Court to award costs as a safeguard to filter frivolous and vexatious litigation, among others. The discretion under section 30 of the CCA must however, be exercised judiciously and where frivolous or vexatious litigation is proved by facts presented an award of costs against an unsuccessful litigant can be ordered. This aligns with the fact that an award of costs in constitutional litigation is a matter, which is in the discretion of the

judge or Court. Section 30 of the CCA underpins this principle. (*emphasis added*)

[18] No evidence was adduced in the opposing affidavit to show that the Petition is frivolous or vexatious. We have also scoured the main record and find that the few applications made in the two months that this matter was being scheduled for hearing, pale in comparison to the 29 applications dealt with over the two years of scheduling the **Milingo Lungu**¹ matter, thereby prompting the minority opinion relied upon by the Respondent. Accordingly, we are inclined to find that this is a matter befitting of an order granting leave to discontinue the main matter and to do so without an order for costs.

[19] We are further fortified in finding no justification for an award of costs by the scheduling judge's findings in her ruling dated 8th December, 2025 wherein she said:

[82] I have perused the petition and the affidavit evidence brought before me by the petitioners. Appreciated holistically, the two questions which the petition raises concern the exercise of powers by the president in establishing and appointing the Technical Committee and the way the Technical Committee has gone on to collate views from members of the public. The provisions of the Constitution marshalled to support the petitioner's application include Articles 5, 8, 9, 90, 91 and 92 of the Constitution.

[83] None of these provisions lay out minutely the manner in which the Constitution making process ought to be undertaken and this explains why the petitioners relied on our decision in **Munir Zulu** in impugning the establishment of the Technical Committee and its operations.

[84] I have deliberately reproduced the parties' arguments in the Ruling at great length in order to show how far apart the parties are in this dispute. In short,

there broadly appears to exist real controversy between the parties on the following:

- a) Whether the President incorrectly or correctly invoked his power under Article 91 (2) (f) and (j) of the Constitution when he constituted the Technical Committee?
 - b) Whether Articles 1(2), 5, 8, 9, 91 (1) (2) and (3) of the Constitution were contravened by the President?
 - c) Whether the Executive breached the Munir Zulu judgment?
- [85] Given the law on what a *prima facie* case has been defined to mean, I have no doubt that the issues raised above require the Court's attention.

[20] The Single Judge having found a *prima facie* case, it follows that the matter is neither frivolous nor vexatious on the face of it, which further militates against the award of costs to the Respondent.

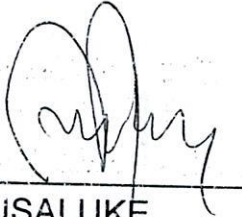
[21] After all due consideration, we have come to the firm conclusion that whilst leave to discontinue the matter is granted as prayed, the Respondent's plea for an award of costs is denied. Each party will bear their own costs.



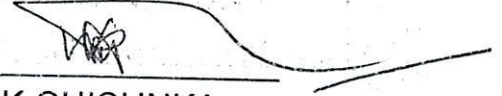
M.M. MUNALULA (JSD)
Constitutional Court President



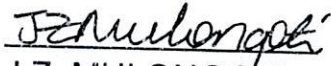
A.M. SHILIMI
Constitutional Court Deputy President



M. MUSALUKE
Constitutional Court Judge



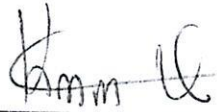
M.K.CHISUNKA
Constitutional Court Judge



J.Z. MULONGOTI
Constitutional Court Judge



M.Z.MWANDENGA
Constitutional Court Judge



K.MULIFE
Constitutional Court Judge