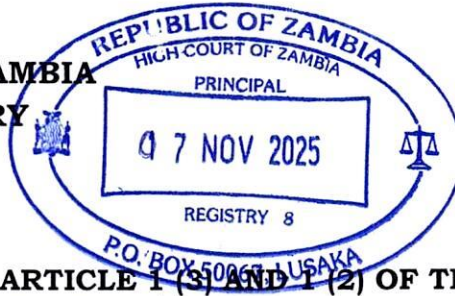


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**



2025/HP/1399

IN THE MATTER OF: ARTICLE 1 (S) AND 1 (2) OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: ARTICLE 11 AND 8 OF THE CONSTITUTION OF ZAMBIA

IN THE MATTER OF: THE UNCONSTITUTIONAL CHARGES OF SEDITIOUS INTENTION PREDICATED ON SECTION 60 OF THE PENAL CODE, CHAPTER 87 OF THE LAWS OF ZAMBIA AND SEDITIOUS PRACTICES CONTRARY TO SECTION 57 OF THE PENAL CODE, CHAPTER 87 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE PROTECTION OF FUNDAMENTAL RIGHTS RULES 1969

BETWEEN:

RAPHAEL MANGANI NAKACINDA

PETITIONER

AND

THE ATTORNEY GENERAL

RESPONDED

BEFORE HON. JUSTICE E. P. MWIKISA

*For The Petitioner: Mr. M. Chongola of Messrs Makebi Zulu Advocates
For The Responded: Nil*

RULING

Cases Referred To:

- 1. Rajan Lekhraj Mahtani and John Sangwa v. The People SCZ Judgment No. 21 of 2009*

2. *C & S Investments Limited, Ace Car Hire Limited, Sunday Maluba v. Attorney General (2004) ZR 216*
3. *Bowman Lusambo v. Attorney General 2023/CCZ/001*

Legislation Referred To:

1. *The High Court Act, Chapter 27 of the Laws of Zambia*
2. *The Penal Code, Chapter 88 of the Laws of Zambia*

This is an ex parte application dated 31st October, 2025, for an order for stay of proceedings before the Subordinate Court pending the determination of the Petition before this court, made pursuant to Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia and the inherent jurisdiction of the court. Section 13 of the High Court Act states as follows:

“In every civil cause or matter which shall come in dependence in the court, law and equity shall be administered concurrently, and the court, in the exercise of the jurisdiction vested in it, shall have the power to grant and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the

rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail”.

The Petitioner seeks an Order to stay proceedings in the matters of The **People v. Raphael Mangani Nakachinda**, presently pending before Honourable Magistrate D. Chibwili, and The **People v. Raphael Mangani Nakachinda**, presently pending before Honourable Magistrate M. Sakala, pending the determination of the Constitutional Petition on the ground that;

1. The Petition impugns the constitutionality of the offence under which the Petitioner stands charged, thereby raising a substantial question of constitutional interpretation which goes to the root of the validity of those proceedings. That accordingly, it is only just and proper that the criminal proceedings be stayed until this Honourable Court has pronounced itself on the said constitutional issue.

The application is accompanied by an affidavit in support, sworn by the Petitioner, Raphael Nakachinda. He deposed therein, inter alia, that he is a leader and political figure, presently serving as Secretary General of the Patriotic Front Party. That he is currently standing trial in the Lusaka Subordinate Court before Honourable Davies

Chibwili and Honourable Mwandu Sakala on charges of seditious practices contrary to Section 57 (1) (b) as read with Section 60 (1) (j) of the Penal Code, Chapter 88 of the Laws of Zambia.

That the charge before Honourable Chibwili arises from statements alleged to have been published via Kanele 97.7 FM's Facebook page between the 26th and 27th of September, 2024, wherein he is alleged to have accused the Republican President of Zambia of directing the investigative wings, namely the Drug Enforcement Commission, Anti-Corruption Commission and the Zambia Police Service, to raid the residence of former President Edgar Chagwa Lungu with the intent to divert public attention from an ongoing eligibility case before the Constitutional Court.

I shall not reproduce the rest of the affidavit evidence, suffice to mention that the same hinges on the charges levelled against the Petitioner in the Subordinate Court, and that he has been advised that staying of criminal proceedings in the Subordinate Court will not intrude upon the prosecutorial discretion but will be an exercise of the judicial power vested in the court to ensure fairness as well as to preserve the integrity of the justice system. That it would be impossible to receive a fair trial under the prevailing circumstances,

and that continuation of those proceedings would offend the court's sense of justice and propriety unless and until this court determines his Petition.

I have carefully considered the application on record together with the accompanying documents. I shall not belabour the point of reproducing the contents of the affidavit as well as the skeleton arguments which I have considered and noted. The Petition that is before me is a civil matter which cannot be used to arrest criminal proceedings in the lower court as guided in the case of **Rajan Lekhraj Mahtani and John Sangwa v. The People SCZ Judgment No. 21 of 2009**¹ and also as espoused in the case of **C & S Investments Limited, Ace Car Hire Limited, Sunday Maluba v. Attorney General (2004) ZR 216**², even though both cases dealt with judicial review applications. In the latter case, the issue that arose among others, was whether criminal investigations can be arrested by civil proceedings and the Supreme Court held that under no circumstances could civil proceedings be used to arrest criminal proceedings.

Further in the case of **Bowman Lusambo v. Attorney General**

2023/CCZ/001³ the Constitutional Court emphasized as follows:

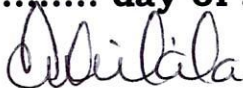
“Thus, as observed in the case of Rajan Mahtani which followed the decision in C and S case, that there are no interlocutory appeals in criminal matters and that the criminal justice system has its own procedure. Furthermore, that it was for this reason that civil procedure must not be used to abort criminal investigations or prosecutions. To go round on an interlocutory appeal in criminal matters by way of judicial review is misconceived...

For avoidance of doubt, we wish to state that civil proceedings cannot be used to arrest criminal proceedings in any circumstance”.

I am equally bound and guided by the above-mentioned authorities as the law is now settled. I, therefore, have no jurisdiction to grant a stay of criminal proceedings in the Subordinate Courts, and I accordingly decline to grant the order sought.

I make no order as to costs.

Dated at Lusaka on^{7th}..... day of ^{November}....., 2025.



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ELITA P. MWIKISA
JUDGE