

**IN THE CONSTITUTIONAL COURT OF ZAMBIA** **2025/CCZ/0019**  
**AT THE CONSTITUTIONAL REGISTRY** **CONSTITUTIONAL COURT OF ZAMBIA**  
**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



11 MAY 2026



IN THE MATTER OF:

ARTICLE 1(5), 2, 128, 147, 152 AND 156 OF  
THE CONSTITUTION OF ZAMBIA  
(AMENDMENT) ACT NO. 2. OF 2016

AND

IN THE MATTER OF:

SECTIONS 56 AND 57 OF THE LOCAL  
GOVERNMENT ACT NO. 2 OF 2019

AND

IN THE MATTER OF:

THE SUSPENSION AND REINSTATEMENT OF  
ELECTED COUNCIL OFFICIALS BY THE  
MINISTER OF LOCAL GOVERNMENT AND  
RURAL DEVELOPMENT AND THEIR  
REPLACEMENT WITH AN UNELECTED  
ADMINISTRATOR

AND

IN THE MATTER OF:

THE ALLEGED CONTRAVENTION OF  
ARTICLES 1(1)(2)(3)(a)(b)(c), 152(2), 153(1)  
AND 156 OF THE CONSTITUTION OF ZAMBIA  
(AMENDMENT) ACT NO. 2 OF 2016

**BETWEEN:**

**MPUTA NGALANDE**

**PETITIONER**

**AND**

**THE ATTORNEY GENERAL**

**RESPONDENT**

**CORAM: Munalula PC, Chisunka, Mulongoti, Kawimbe and  
Mulife JJC on 12<sup>th</sup> February, 2026 and 11<sup>th</sup> May, 2026.**

For the Petitioner:

Mr. M. M Batakathi, and Mr. M. Kapatiso of  
Messrs. Malisa and Partners

For the Respondent:

Ms J. L. Sipalo, Senior State Advocate, and  
Mr. M.Kwalela Senior State Advocate,  
Attorney General's Chambers

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## J U D G M E N T

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Mulongoti JC, delivered the judgment of the Court

Cases cited:

1. Governor Ekiti State & others v Prince Sanmi Olubunmo & 13 others (2016) CLR 12 (N) (SC)
2. Akpan v Umah (2002) 7 NWLR (Pt. 767)
3. Hon. Chigozie Eze and others v Governor of Arbia State and Others (2014) 14 NWLR (Pt 1059) 94
4. R v Secretary of State of the Home Department ex parte Simms 2000 AC 115
5. Steven Katuka (suing as Secretary General of the United Party for National Development) and another v Attorney General and another CCZ Selected Judgment No. 29 of 2016
6. Godfrey Miyanda v Attorney General 2016/CC/0006
7. Webby Mulubisha v Attorney General 2018/CCZ/0013

Legislation referred to:

The Constitution of Zambia, Chapter 1 of the Laws of Zambia  
The Local Government Act No. 2 of 2019

### Introduction

[1] The Minister of Local Government and Rural Development (the Minister) is empowered pursuant to sections 56 and 57 of the Local Government Act (LGA), to suspend a council by reason of its refusal, failure or inability to perform its functions adequately for a period of 90 days. During the suspension, the Minister appoints a local government administrator to discharge the functions of the council and his/her decisions are deemed to have been made by the council.

[2] The petitioner, Mputa Ngalande, filed this Petition challenging the constitutionality of the powers of the Minister to suspend an elected council pursuant to sections 56 and 57 of the LGA.

- [3] At its core, the Petition concerns the relationship between the national government and the local government which in Zambia is commonly referred to as the council. Local government is constitutionally recognised under Part IX and XI of the Constitution of Zambia (Amendment) Act No.2 of 2016 (the Constitution).
- [4] The petitioner alleges that sections 56 and 57 of the LGA are unconstitutional as they contravene Articles 1(1), (2) and (3), 5(1), 147(3)(a), (b) and (c), 152(2) and 156 of the Constitution.

### **The Background facts**

- [5] The background facts giving rise to the Petition are as stated in the Petition and affidavit verifying facts deposed to by the petitioner, as follows:
- [6] On 4<sup>th</sup> November, 2022, the then Minister of Local Government and Rural Development, Hon. Garry Nkombo, suspended the operations of the Kafue Town Council and appointed Abel Siwakwi, as Local Government Administrator, to oversee the operations of the Local Authority per exhibit MN1 of the affidavit. The suspension was done pursuant to sections 56 and 57 of the LGA and it was lifted on 15<sup>th</sup> February, 2023 per exhibit MN2.
- [7] On the 29<sup>th</sup> day of January, 2025 the same Minister by press statement suspended the Mayor and Councillors of the Chongwe Municipal Council for a period of ninety (90) days on allegations of

illegal land allocation, contrary to the Urban and Regional Planning Act per exhibit MN3.

- [8] Subsequently, on the 1<sup>st</sup> day of August, 2025, the new Minister reinstated the Chongwe Municipal Council after what he described a one hundred and eighty (180) day suspension, thereby allowing the Mayor and Councillors to resume their functions per exhibit MN4.

**Petitioner's case**

- [9] It is the petitioner's case that sections 56 and 57 of the LGA are unconstitutional to the extent that they empower the Minister to suspend the democratically elected councils and replace them with unelected Local Government Administrator who is appointed by the Minister. That this amounts to interference with the operations of the councils contrary to the provisions of the Constitution particularly Articles 152(2) and 156 of the Constitution and thereby affect the democracy, independence and autonomy of local authorities/councils.
- [10] Additionally, it is averred that the actions of the Minister to suspend Kafue and Chongwe councils which were exercised pursuant to section 56 and 57 of the LGA contravened Article 1 (1), (2) and (3) which establish the Constitution as the highest law of the land which binds all persons and state organs including Ministers. That the two sections also contravene the core values and principles of a local

authority's autonomy as enshrined in Articles 147,151, 152(2), 153(1) and 156 of the Constitution.

[11] As a result of the alleged contravention of the Constitution, the petitioner seeks:

**(i) A declaration that section 56 and 57 of the Local Government Act are unconstitutional as they contravene the provisions of Articles 1(1)(2)(3), 5(1), 147(3)(a)(b)(c), 151(1), 152(2) and 153(3) of the Constitution of Zambia and thus declared null and void.**

**(ii) An order for the payment of all salaries, allowances and other emoluments due to the Councillors of Kafue Municipal Council and Chongwe Municipal Council for the duration of the suspension and (iii) any other relief that the Court may deem fit.**

#### **Petitioner's skeleton arguments**

[12] In support of the Petition, the petitioner filed skeleton arguments. It is submitted that the Constitution is the supreme law of the land which binds everyone and that any act or omission that contravenes the Constitution is illegal in line with Article 1 (1), (2) and (3) of the Constitution. Citing Article 147, the petitioner highlighted that the Constitution prescribes a devolved system of governance with management and administration of the political, social, legal and economic affairs of the State devolving from the national government level to the local government level.

[13] That Article 147(3) of the Constitution enshrines the principles that all different levels of government are expected to adhere to, as follows:

- (a) good governance, through democratic, effective and coherent governance systems and institutions;
- (b) respect for the constitutional jurisdiction of each level of governance.
- (c) autonomy of the sub-structures; and
- (d) equitable distribution and application of national resources to the sub-structures.

Thus, arbitrary removal of elected councillors by the Minister negates the principles and disenfranchises the electorate.

[14] With regard to Article 151(1) (a) and (c) of the Constitution, the petitioner asserts that it establishes a local government system where functions, responsibilities and resources from the national government and provincial administration are transferred to the local authorities in a coordinated manner.

[15] It was submitted that the operation of Article 152 which provides the functions of local authorities is anchored on the principle of cooperative governance, which requires cooperation without intrusion, accountability without usurpation of roles, and oversight without arbitrariness. This underscores the importance of the cooperative governance frame work, as such the Constitution in Article 152(2) provides for a non-interference clause by national government and provincial administration in the local authority's ability or right to perform its functions.

[16] Thus, the Constitution prudently recognizes the need for coexistence and cooperative synergy between the administrative

arm of government and the democratic arm or office. Any action by either body which interferes with the other constitutes a blatant violation of the Constitution and the tenets of constitutionalism.

[17] As regards Article 153 which provides for election of councillors, composition of councils and tenure, it was submitted that councillors are duly elected by the people of Zambia through a democratic electoral process.

[18] Furthermore, that Article 156 of the Constitution not only outlines the process by which councillors are elected, but also ensures their *accountability* in the discharge of their public duties.

[19] According to the petitioner two principal issues arise with regard to sections 56 and 57 of the LGA. First the authority conferred upon the Minister to suspend a duly elected office holder and the subsequent revocation of the suspension after a possible indefinite period of time; and second the discretion of the Minister to appoint a public officer to act as Local Government Administrator to execute the functions of the suspended council.

[20] Concerning the first issue, it is argued that section 56 of the LGA allows for suspension of duly elected councillors on the basis of refusal, failure or inability to adequately perform all or any of their functions. That two principal considerations to note are, first, the terms 'refusal', 'failure' and 'inability' are not defined with sufficient precision within the legislative framework, thereby vesting the

Minister with broad discretionary authority to determine whether a council has failed to perform its functions. This unfettered discretion raises concerns regarding potential for arbitrary or politically motivated interventions, absent clear and objective criteria.

[21] Second, that the suspension of duly elected councillors undermines the democratic mandate conferred upon them by the electorate. According to the petitioner, nowhere in our constitutional framework are elected officials replaceable through Executive Orders or decisions of Cabinet Ministers as a way of holding them accountable, whether for a specified period of time or indefinitely.

[22] That any alteration to their tenure should be conducted through lawful procedures that reflect and uphold the electorates' right to choose their representatives.

[23] To reinforce this argument reliance was placed on the Nigerian case of **Governor Ekiti State & Others v Prince Sanmi Olubunmo and 13 Others<sup>(1)</sup>** in which it was stated that

**The implication, therefore, is that section 23B, which was not intended to "ensure the existence of "such democratically elected Council, but to snap their continued existence by their substitution with Caretaker Councils, was enacted in clear breach of the supreme provisions of section 7 (1) of the Constitution (supra). To that extent, it [Section 23B, supra] cannot co-habit with section 7 (1) of the Constitution (supra) and must, in consequence, be invalidated."**

[24] The Court in that case further observed that

Elections like in any other country should be held sacrosanct. Representatives of the people through an election [at whatever level] cannot just be removed or their Councils dissolved at the pleasure of other elected office holders... Simply put, therefore, the election of such officials into their offices and their tenure are clothed with constitutional force. They cannot, therefore, be abridged without breaching the Constitution from which they derive their force.

[25] To amplify, the case of *Akpan v Umah*<sup>(2)</sup> also a Nigerian case was referred to which holds

Although it is within the legislative power of a State House of Assembly to make a law or regulate a Local Government Council... any law made by the House of Assembly which provides for nomination of membership of a Council or appointment of an Administrator or Caretaker Committee to replace a democratically elected Council is inconsistent with the clear and unambiguous provisions of section 7(1) of the 1999 Constitution which guarantees democratically elected Local Government Councils and is therefore unconstitutional to the extent of the inconsistency

[26] It was the petitioner's further submission that the Minister's power to appoint a local Government Administrator to discharge the full functions of a suspended council, like what happened with the Kafue Town council constituted a departure from the Constitutional principles of participating and representative government as held in the Nigerian case of *Hon Chigozie Eze and Others v Governor of Abia State and Others*<sup>(3)</sup> that:

...it is the duty of the Governor to ensure that the system of Local Government continues unhindered. Dissolving Local Government Councils and replacing them with Caretaker Committees amounts

to the Governor acting on his own whim and fancies, unknown to our laws...

[27] In conclusion, it was argued that the sections 56 and 57 of the LGA permit the automatic extension of a suspension order for successive ninety-day periods, absent express revocation, and simultaneously empowers the Minister to extend such orders at will. This effectively confers upon the Minister an unfettered discretion to maintain the suspension of a duly elected council for an indefinite duration. This legislative mechanism, devoid of clear procedural safeguards, substantive thresholds, or temporal limitations, establishes a framework that is inherently vulnerable to abuse and arbitrary exercise of executive power.

[28] At the hearing the petitioner's counsel Mr. Batakathi and Mr. Kapatiso made oral submissions to augment the written ones. Mr. Batakathi submitted that we must give a purposive interpretation of the Constitution in line with Article 267(1) of the Constitution. Counsel urged the Court to also consider the Final Report of the Technical Committee at pages 515 to 517, 561 to 563 where they deliberated on the rationale of Article 197 which culminated in Article 147 of the Constitution.

[29] That the Court should note that historically, the country moved from the colonial system of local government to democratically elected councils. He conceded that councils should be accountable but quipped that Ministers should not interfere in their operations.

[30] Mr. Kapatiso, amplified that the current provisions of the LGA are a replica of the outdated local government order. That prior to 2016 constitutional amendments there was only one Article in the Constitution which simply read “there shall be a Local Government system as prescribed in Article 109”. That the local Government system then was prescribed in the Local Government Act. This is no longer the case, as with the 2016 amendments the Constitution entrenched an entire Local Government architecture with Article 152 (2) entrenching the principle of non-interference. That sections 56 and 57 of the LGA rely on a constitutional order that no longer exists and are the last vestiges of the colonial master’s management of local government. To maintain the two sections would water down the Constitution as amended by Act No. 2 of 2016.

#### **Respondent’s case**

[31] In response to the Petition, the respondent filed an Answer which is supported by an affidavit in opposition and a witness statement sworn by Ackson Habanji, in his capacity as Director Local Government Administration in the Ministry of Local Government and Rural Development. The witness statement was dispensed with at the hearing and reliance was placed on the Answer, the affidavit in opposition and the skeleton arguments.

[32] The respondent admits that the Kafue Town Council was suspended for 90 days and a Local Government Administrator was

appointed in its place. The respondent, however, avers that the suspension was in line with sections 56 and 57 of the LGA as the council was engaged in illegal land allocation.

[33] Concerning Chongwe Municipal Council, the respondent admits that it was equally suspended for 90 days pursuant to sections 56 and 57 of the LGA on allegations of illegal land allocation contrary to the Urban and Regional Planning Act No. 3 of 2015.

[34] The respondent denied the petitioner's allegations that sections 56 and 57 of the LGA are in breach of Articles: 1 (1), (2) and (3), 147 (3) (a) (b) and (c), 152 (2), 153 and 156 of the Constitution, as independence and authority of local authorities is not absolute meaning their actions cannot go unchecked. It is contended that the two sections serve a fundamental principle of ensuring transparency and accountability of the actions of the local authority members to the public and national Government in line with legitimate expectations of the electorate.

[35] The respondent further averred that the role of the national Government *vis-à-vis* local authorities is contained under the LGA in section 31 which empowers the national Government to implement policies, provide oversight and accountability to local authorities.

[36] On behalf of the respondent, the senior state advocates Mr. Kwalela and Ms Sipalo also made oral submissions. Mr. Kwalela submitted

that the first relief must fail because Article 272 (b) and (f) of the Constitution offers Parliament power to enact legislation which give effect to an article of the Constitution. Thus, the Constitution allowed Parliament to give effect to Article 156 by enacting the LGA wherein sections 56 and 57 are located. The sections act to keep councils in check as “power tends to corrupt and absolute power corrupts absolutely” per Lord Hoffman in *R v Secretary of State of the Home Department ex parte Simms*<sup>(4)</sup>. Therefore, sections 56 and 57 are a creature of the Constitution through Article 272.

[37] In her oral submissions Ms Sipalo argued that in a functional democracy no public office can escape the long arm of the law including local authorities and councillors. Counsel contended that Article 155 on conduct of councillors does not guarantee absolute power to the councils as they are mandated to act in a manner that is consistent with civic duties and responsibilities, as prescribed. Thus sections 56 and 57 of the LGA derive from Articles 155 and 156 of the Constitution and suspension does not amount to interference as provided under Article 152 (2) as the councils are accountable to the national Government and citizens.

### **Determination**

[38] We have considered the Petition, the Answer, the respective affidavits and competing arguments of the parties.

[39] The cardinal issue that arises is whether sections 56 and 57 of the LGA are inconsistent with the provisions of the Constitution for empowering the Minister to suspend an elected council and replace it with an unelected official.

[40] The provisions of the impugned sections 56 and 57 of the LGA are couched thus:

**56 (1) The Minister may, by reason of the refusal, failure or inability of a council to adequately perform all or any of its functions by statutory order -**

- (a) appoint a Public Officer to be the Local Government Administrator for that Council; and**
  - (b) suspend all councillors of the Council from performing all of their functions as councillors and empower the Local Government Administrator to discharge all the functions of the Council.**
- (2) Any functions of the Council discharged by a Local Government Administrator under subsection (1) shall be deemed to have been discharged by the Council in accordance with this Act.**
- (3) The Local Government Administrator shall relinquish office on the lifting of the suspension.**

**57 (1) An order made by the Minister under section 56 shall unless revoked, expire after ninety days of making the order except that the Minister may, in the interest of Local administration, extend the order for further periods of ninety days at a time.**

**(2) Where the Minister revokes the order appointing the Local Government Administrator made under section 56, the Local Government Administrator shall cease to perform the functions of the Council, and the functions shall be vested and performed by the Council that is constituted under Article 153 (2) of the Constitution.**

[41] Before we delve into consideration of the issue whether the two sections are unconstitutional, it is imperative for us to highlight the provisions of the Constitution alleged to have been contravened.

[42] In the main the petitioner's case is that sections 56 and 57 of the LGA are inconsistent with various articles of the Constitution particularly, Articles 147 (3), 152 (2) and 156 of the Constitution and they should be declared null and void to the extent of the inconsistency.

[43] Article 147 (3) of the Constitution which entrenches the system of devolved governance provides:

**The different levels of government shall observe and adhere to the following principles:**

- (a) good governance, through democratic, effective and coherent governance systems and institutions;**
- (b) respect for the constitutional jurisdiction of each level of governance.**
- (c) autonomy of the sub-structures; and**
- (d) equitable distribution and application of national resources to the sub-structures.**

[44] Article 152(2) of the Constitution provides as follows

**152 (2) The national Government and the provincial administration shall not interfere with or compromise a local authority's ability or right to perform its functions.**

[45] Whilst Article 156 provides:

**156. Councillors shall be collectively and individually accountable to the national Government and residents in their wards and districts, for the performance of their functions.**

[46] In addition, we took into account related provisions in Articles 155 and 157 (1) (e) which read as follows:

**155. A councillor shall act in a manner that is consistent with a councillor's civic duties and responsibilities, as prescribed.**

**157(1). A councillor shall vacate office on dissolution of a council  
(e) where the councillor acts contrary to the code of ethics  
provided for in Article 155**

[47] It is vital that we interpret the provisions before we determine the cardinal issue at the core of the Petition. Authorities abound where this Court has held that in interpreting the Constitution, no single provision is to be segregated from the others and considered alone but all other provisions bearing upon a particular subject are to be brought into view and to be so interpreted so as to give effect to the greater purpose of the instrument. Additionally, Article 267 enjoins the Court to interpret the Constitution in accordance with the Bill of Rights and in a manner that promotes its purposes, permits the development of the law and contributes to good governance. See **Steven Katuka (suing as Secretary General of the United Party for National Development) and another v Attorney General and another**<sup>(5)</sup>.

[48] With that in mind, we note that Article 147 (3) of the Constitution which falls under Part IX entitled 'General Principles of Devolved Governance' provides for the principles of devolved governance *inter alia*; respect for the constitutional jurisdiction of each level of government and autonomy of the sub-structures. Part XI of the Constitution entitled 'Local Government' provides for the functions of the local authority and election plus tenure of the councils. Articles 152 (2) and 156 which are at the core of this Petition fall under this part.

[49] We must state that councils operate in a specific geographic area for instance Chongwe District Council and they have democratic mandate as they are elected from the community through local government elections.

[50] In *casu* the petitioner contends that sections 56 and 57 of the LGA are unconstitutional to the extent that they empower the Minister to interfere in the operations of the council by suspending the democratically elected councils and replacing them with an unelected civil servant, whose decisions are deemed to be made by the council. On top of that the Minister has broad discretion to determine whether the council has acted contrary to sections 56 and 57 of the LGA and to prolong the period of suspension by a further 90 days. That the powers of the Minister entail that the council is accountable to the Minister and not the residents/electorate who elected it.

[51] The respondent disputes the petitioner's assertions and maintains that sections 56 and 57 of the LGA are not in breach of Articles 152 (2) and 156 as Parliament enacted them in line with its mandate in Article 272 (b) and (f) to enact laws which give effect to articles of the Constitution. Additionally, that the Minister merely acted to suspend the council due to wrong doing of illegal land allocation which does not amount to interference.

[52] The objective of the LGA is as stated in the preamble, *inter alia*;

**an Act to provide for an integrated local government system; give effect to the decentralization of functions, responsibilities and services at all levels of local government; ensure democratic participation in, and control of decision making by the people at the local level...**

[53] The underlying issue thus, is whether sections 56 and 57 of the LGA are inconsistent with the provisions of the Constitution on local government system and principles of devolved governance? To answer the question we must draw a line between a local authority's autonomy/democratic mandate and the national government's oversight role to ensure accountability as enshrined in Article 156.

[54] Our reading of Part IX on local government system which provides for principles of local government and Part XI on principles of devolved governance reveals that the Constitution provides in detail the relationship between the national government and local government system. Apart from the principles to be observed and adhered to by all the different levels of government enshrined in Article 147(3) of the Constitution which include respect for the constitutional jurisdiction of each level of government and autonomy of the sub-structures, people's participation in democratic governance is also promoted.

[55] Provincial administration is recognized under Part X of the Constitution headed by a provincial minister and permanent secretary plus other staff. Thus, the provincial administration which

is based on appointment is quite distinct from the local government system based on democratic elections.

[56] Bearing in mind, the provisions on the system of local government and principles of devolved government together with the provisions of Article 152 (2) and 156, our interpretation of Article 152 (2) is that the Constitution expressly prohibits the national government and provincial administration from interfering with or compromising a local authority's ability or right to perform its functions whilst recognizing that the local authorities/ councils are accountable to the national government and electorates. Therefore, councils must at all times retain the ability to perform their functions. It is in so doing that they are held accountable by both their communities and national government in line with the provisions of Article 156.

[57] The petitioner contends that sections 56 and 57 of the LGA contravene Articles 152 (2) and 156. It is settled law as constitutionally recognized under Article 1 (1) that the Constitution is the supreme law and all laws derive their authority from the Constitution and any law that is inconsistent with the provisions of the Constitution is void to the extent of the inconsistency.

[58] As the supreme law, our Constitution provides for a system of devolved governance and a system of local government. Article 152 (2) provides for non-interference by the national government and provincial administration in the councils' right or ability to perform its

functions. Article 156 provides that the council is accountable to the national government and the residents. Clearly, the Constitution does not provide for suspension of the councils by the national government through the Minister, but it speaks to non-interference and accountability to national government and the residents in the discharge of its functions. In our view, the Constitution expressly rules out suspension as it would prevent the council from performing its functions. Thus, accountability has to be in other ways such as suspending their decisions or overturning them and taking all other legal actions against misconduct including engaging the criminal justice system.

[59] We acknowledge that in a democracy the will of the people/electorate is paramount. As such, suspending a democratically elected council and replacing it with an administrator, is a serious act which we opine must be backed by the supreme law of the land. In the absence of clear constitutional authority, Parliament cannot, through ordinary legislation, confer such power in a manner that undermines democratic representation. We are of the firm view and hold that since the Constitution does not provide for suspension of a local authority/ council, sections 56 and 57 of the LGA which empower the Minister to suspend the councils are inconsistent with the provisions of Articles 152 (2) and 156 of the Constitution.

[60] We equally find and hold that the two sections by empowering the Minister to suspend the council also negate the devolution of local government system and autonomy of the sub structures as enshrined in Article 147 (3). Furthermore, by empowering the Minister to suspend all democratically elected councillors, which has the effect of severing their democratic mandate, the two sections contravene Article 153 (3) which provides that councillors are elected representatives of the people and are accountable to their electorate.

[61] We elucidated on the supremacy of the Constitution as enshrined in Article 1 (1) in **Godfrey Miyanda v Attorney General**<sup>(7)</sup> that statutory provisions cannot expand, restrict or contradict the clear terms of the Constitution. In **Webby Mulubisha v Attorney General**<sup>(8)</sup>, we held that any provision in the statute book which runs afoul of a provision of the Constitution is void to the extent of the inconsistency in question. Sections 56 and 57 undoubtedly run afoul the provisions of the Constitution as stated above.

[62] The sum of our reasoning therefore is that sections 56 and 57 of the LGA must yield to the supremacy of the Constitution. Whilst the impugned sections purport to give the Minister discretionary power to suspend a council, the Constitution provides otherwise.

[63] In addition to the national values and principles, in particular the values of democracy, devolution, constitutionalism, legal

development and good governance found in mutually reinforcing provisions of the Constitution, Part XI of the Constitution creates an autochthonous (homegrown) system of local government which does not include the suspension of a council.

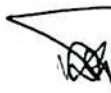
[64] Specifically, Article 152 (2) prohibits the national government and the provincial administration from interfering with or compromising the ability or right of a local authority (which includes a council) to perform its functions. Under Article 156, councillors are collectively and individually accountable to the national government and to the residents in their wards and districts for performance of their functions. In other words, failure to perform the functions is sanctioned by the Constitution and councillors are never at liberty to conduct themselves outside of the law.


[65] In this regard, Article 155 binds every councillor to act in accordance with prescribed civic duties and responsibilities. By virtue of Article 157 (1) (e) a councillor loses their seat for acting contrary to the code of ethics provided for in Article 155. In other words, 'recall' at the individual level and not suspension of a council is spelt out in the Constitution itself.

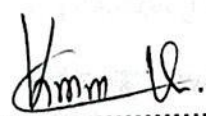
[66] It follows that the Constitution does not provide for suspension of a council nor does it provide for any other entity to perform the functions of a council, thereby rendering the impugned sections unconstitutional for being inconsistent with the Constitution.

- [67] In light of the preceding paragraphs and Article 1(1) we declare that sections 56 and 57 of the LGA are unconstitutional as they are inconsistent with the provisions of the Constitution in particular Articles 152 (2) and 156 of the Constitution.
- [68] Regarding the order for payment of allowances and emoluments we note that the petitioner did not substantiate this claim for us to properly adjudicate on it. The affidavit verifying facts and exhibits only speak to the fact of suspension. And the claim does not fall within our jurisdiction.
- [69] In the net result the petition succeeds to the extent that sections 56 and 57 of the LGA are inconsistent with various articles of the Constitution in particular Articles 152 (2) and 156 and are hereby declared null and void.
- [70] We order each party to bear own costs.

  
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M. M. MUNALULA JSD  
PRESIDENT – CONSTITUTIONAL COURT

  
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M. K. CHISUNKA  
CONSTITUTIONAL COURT JUDGE

  
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J. Z. MULONGOTI  
CONSTITUTIONAL COURT JUDGE

  
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K. MULIFE  
CONSTITUTIONAL COURT JUDGE

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## CONCURRING OPINION

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**Kawimbe JC**

**Cases referred to:**

1. Kenya National Commission on Human Rights, Supreme Court Advisory Reference No.1 of 2012; (2014) eKLR

**Legislation referred to:**

The Constitution of Zambia, Chapter 1 of the Laws of Zambia, as amended by The Constitution of Zambia Act No. 2 of 2016  
The Local Government Act No. 2 of 2019

**Other works referred to:**

1. Constitutional Law, Doctrines and the Litigation of Fundamental Rights and Freedoms by Justice Isaac Lenaola and Arnold Ochieng Oginga, Law Africa Publishing (K) Ltd, Kenya, 2023 Nairobi.

[71] In this concurring opinion, what is brought into sharp focus is the approach to be taken in interpreting the Constitution as what may be deemed to be correct may be more than a mere textual or statutory interpretation. This is premised on the principle that a written Constitution derives from a clear purpose and aim from the citizens and thereby fundamentally differs from ordinary or subsidiary legislation which may not be subject to the vigorous process of “people acceptance”.

[72] In our context, the Constitution gives clear guidance on how it ought to be interpreted in Article 267 which enacts that:

267(1). This Constitution shall be interpreted in accordance with the Bill of Rights and in a manner that-

- (a) promotes its purpose, values and principles;
- (b) permits the development of the law; and
- (c) contributes to good governance...

[73] It follows that, when resolving any allegation of constitutional contravention under Article 128 of the Constitution, which spells out the Court's jurisdiction, the Court will invariably be required to interpret the Constitution. As a general rule, in order to ascertain the meaning of a provision in a statute, which includes the Constitution, the general rules of legislative interpretation have to be employed.

[74] The Court is also required in constitutional interpretation to read all the relevant provisions as an integrated whole and not in a narrow or pedantic sense that does not achieve its objective. What is meant by holistic constitutional interpretation was given perspective in the matter of **Kenya National Commission on Human Rights, Supreme Court Advisory Reference No. 1<sup>3</sup>** where the Supreme Court of Kenya at paragraph 26 stated that:

**But what is meant by a holistic interpretation of the Constitution? It must mean interpreting the Constitution in context. It is contextual analysis of a constitutional provision, reading it alongside and against other provisions, so as to maintain a rational explication of what the Constitution must be taken to mean in the light of its history, of the issues in dispute, and of the prevailing circumstances.**

[75] In light of our current constitutional discourse, when courts are interpreting the Constitution, Article 267 thereof together with relevant provisions, which are the subject of a dispute, must be

considered as provisions, in a living document, while taking into account their historical context, the prevailing circumstances and societal needs. This implies that the Constitution must evolve through judicial interpretation which must remain relevant and effective over time to the Zambian people.

[76] Our Article 267(1) of the Constitution mirrors Article 259 of the Constitution of Kenya, 2010. The context and purpose of Article 259 of that Constitution which intrinsically bears on Article 267(1), was well explained by the learned authors of **Constitutional Law, Doctrines and the Litigation of Fundamental Rights and Freedoms**, at page 20 that:

**A consideration of different Constitutions shows that they are written in different styles and modes of expression. Some Constitutions are highly legalistic and minimalist, as regards express safeguards and public commitment. But the Kenyan Constitution fuses this approach with declarations of general principles and statements of policy. Such principles or policy declarations signify a value system and ethos, a culture or a political environment within which citizens aspire to conduct their affairs and interact among themselves and with their public institutions. Where a Constitution takes such a fused form in terms, a Court of law ought to keep an open mind while interpreting its provisions. In such circumstances, the court should adopt an interpretation that contributes to the development of both the prescribed norm and the declared principle or policy; and care should be taken not to substitute one for the other. (emphasis my own)**

[77] Articles 147(3), 152(2) and 156 of the Constitution provide as follows:

**147(3). The different levels of government shall observe and adhere to the following principles:**  
**(a) good governance, through democratic, effective and coherent governance systems and institutions;**

- (b) respect for the constitutional jurisdiction of each level of government;
- (c) autonomy of the sub-structures; and (d) equitable distribution and application of national resources to the sub-structures.

152(2). The national Government and the provincial administration shall not interfere with or compromise a local authority's ability or right to perform its functions.

156. Councillors shall be collectively and individually accountable to the national Government and residents in their wards and districts, for the performance of their functions.

[78] The provisions of the Constitution cited above entail that different levels of Government are mandated to adhere to certain principles which centrally revolve around good governance. The national Government is prohibited from interfering with or compromising a local authority's ability or right to perform its functions. In addition, the Constitution places an obligation on councillors to be collectively and individually accountable to national Government and the residents in their ward and district in the execution of their duties.

[79] Article 152(1) of the Constitution provides for the functions of a local authority as follows:

152. (1) A local authority shall-
- (a) administer the district;
  - (b) oversee programmes and projects in the district;
  - (c) make by-laws; and
  - (d) perform other prescribed functions.

[80] Article 155 of the Constitution provides that:

155. A councillor shall act in a manner that is consistent with a councillor's civic duties and responsibilities, as prescribed.

[81] Article 266 defines "prescribed" to mean "provided for in an Act of Parliament."

[82] In my view, the import of Articles 152(1), 155 and 266 of the Constitution is that a local authority (council) has the responsibility to perform the functions set out in Article 152. This by implication entails that each councillor has a responsibility to perform those duties individually and collectively. However, Article 155 of the Constitution mandates a councillor in performance of these functions to act in a manner that is consistent with that councillor's civic duties and responsibilities which have to provided for in an Act of Parliament.

[83] Pursuant to Article 155 of the Constitution, the LGA was enacted to provide for, among others, the manner of performing civic duties and responsibilities by a councillor. To that effect, section 53 of the LGA provides as follows:

**53. A councillor shall perform civic duties and responsibilities with dignity and integrity in accordance with the code of ethics set out in the Fifth Schedule.**

[84] The code of ethics in the Fifth Schedule in paragraph 6 in relation to the performance of a councillor's civic duties and responsibilities provides as follows:

**6. A councillor shall, in the exercise of the councillor's civic duties and responsibilities:**

- (a) act in good faith;**
- (b) behave in an honest and transparent manner;**
- (c) act in the best interest of a local authority and uphold the integrity and credibility of the local authority; and**
- (d) ensure that official duties take precedence over other duties.**

[85] It should be noted that section 53 of the LGA and Fifth Schedule thereto complement sections 56 and 57 of the LGA.

[86] The suspension of elected officials from council therefore is not to be taken lightly as this interferes with councillors' duties to represent the people at the local government level. Power is subject to accountability and under the Constitution, it would appear that our democracy is not built on electoral absolutism or unlimited power granted by the majority to leaders at the time of their election. Accordingly, where elected leaders act outside the law, it would follow from the Constitution that they will be held accountable within their tenure and not at the end.

[87] The Constitution does not elevate elected office above the rule of law because it demands that democratic power must be exercised lawfully, responsibly and accountably.

.....*M. M. Kawimbe*.....  
**M. M. KAWIMBE**  
**CONSTITUTIONAL COURT JUDGE**