

IN THE CONSTITUTIONAL COURT OF ZAMBIA  
AT THE CONSTITUTIONAL COURT REGISTRY  
HOLDEN AT LUSAKA

2025/CCZ/0033

(CONSTITUTIONAL JURISDICTION)

IN THE MATTER OF: ARTICLE 1 (SUPREMACY OF THE CONSTITUTION),  
ARTICLE 2 (DEFENCE OF THE CONSTITUTION) AS  
READ WITH ARTICLE 128(1)(a) AND (b), 128(3)(b) AND  
(c) (JURISDICTION) OF THE CONSTITUTION OF  
ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF PART XVIII AS  
READ WITH ARTICLE 266 OF THE CONSTITUTION OF  
ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

IN THE MATTER OF: A CHALLENGE TO THE CONSTITUTIONALITY OF  
SECTION 5 OF THE MINERALS REGULATION  
COMMISSION ACT NO. 14 OF 2024.

BETWEEN

PETER CHAZYA SINKAMBA

(Suing for and on behalf of Citizens for a Better Environment)

AND

ATTORNEY GENERAL

PETITIONER

RESPONDENT



CORAM: Munalula – PC, Shilimi – DPC, Musaluke, Chisunka and Mulife, JJC on 23<sup>rd</sup>  
April, 2026 and 22<sup>nd</sup> June, 2026

For the Petitioner: Mr. Peter C. Sinkamba – In Person

For the Respondent: Mr. K. Chipulu, Principal State Advocate, Mrs. M. H. Cheelo,  
Senior State Advocate and Mr. L. Muwongo, State Advocate

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### JUDGMENT

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Shilimi – DPC, delivered the judgment of the Court

Case referred to:

1. Attorney General of the Commonwealth v The Queen [1957] AC 288
2. R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254

3. **Dipak Patel v Minister of Finance and The Attorney General 2020/CCZ/005**
4. **Attorney General of Trinidad and Tobago v Whiteman, (1991) 240**
5. **Zambia National Commercial Bank Plc v Martin Musonda and 58 Others, CCZ Selected judgment No. 24 of 2018**
6. **Major General David Tinyefuza v The Attorney General of Uganda, Constitution Petition No. 1**
7. **Munir Zulu v Attorney General and 2 Others 2025/CCZ/0010**
8. **Elijah Simbai v Zambia Institute of Advanced Legal Education 2023/CCZ/0023**

**Legislation referred to:**

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

The Constitution of Zambia Act No. 1 of 2016

**Works referred to:**

Report on the Technical Committee on drafting of the Zambian Constitution dated 30<sup>th</sup> April, 2012

Report of the Constitutional Review Commission 2005 (Mung'omba Commission)

Francis Bennion, Statutory Interpretation, 3<sup>rd</sup> Edition, Butterworths

**1.0 Introduction**

- 1.1 The Petitioner, Mr. Peter Sinkamba, suing on behalf of Citizens for a better environment, filed this Petition claiming that Section 5 of the Minerals Regulation Commission Act No. 14 of 2024 (the Act) breaches Articles 216-237 as read with Article 266 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 (The Constitution). He asserted that the Minerals Regulation

Commission (MRC) is not one of the commissions created by the Constitution and therefore lacks a constitutional foundation.

1.2 The Respondent denied the alleged constitutional contravention and labelled the Petition as misconceived.

## **2.0 Petitioner's Case**

2.1 The Petitioner averred that the Act came into operation on 13<sup>th</sup> June 2025 by statutory instrument No. 40 of 2025. That section 5 of that Act establishes the MRC as a body corporate with perpetual succession. According to the Petitioner, the MRC is intended to replace the fragmented regulatory oversight in the mining sector and is vested with functions that are regulatory and administrative in nature. These functions, the Petitioner posited, are typical of a constitutional commission.

2.2 The Petitioner went on to assert that the MRC is not listed among the commissions established under Part XVIII of the Constitution. That its establishment under section 5 of the Act is an attempt by Parliament to create a constitutional commission by statute. The Petitioner argued that this is not permissible under the current constitutional framework and makes the MRC unconstitutional, illegal, and null and void.

2.3 Premised on this, the Petitioner sought the following relief:

- 2.3.1 A declaration that the establishment of the Minerals Regulation Commission under Section 5 of the Minerals Regulation Commission Act 2024 (Act No. 14 of 2024) is unconstitutional, illegal and void, as it contravenes Articles 216-237 as read with Article 266 of the Constitution of Zambia (Amendment) Act No. 2 of 2016;**
- 2.3.2 A declaration that the Minerals Regulation Commission (Act No. 14 of 2024) is inconsistent with the provisions of the Constitution and is therefore void to the extent of the inconsistency, pursuant to Article 1(1) of the Constitution;**
- 2.3.3 An order of certiorari to quash the said Minerals Regulation Commission Act, 2024 (Act No. 14 of 2024) and the establishment of the Minerals Regulation Commission forthwith;**
- 2.3.4 An order for the respondent to bear the costs of and incidental to this Petition; and**
- 2.3.5 Such further or other relief as this honourable court shall deem fit and just.**
- 2.4 The Affidavit evidence reiterated the contents of the Petition and exhibited "PCS1" and "PCS2", copies of Statutory Instrument No. 40 of 2025 which brought the Act into operation and the Government Gazette in which it was published.
- 2.5 In skeleton arguments, the Petitioner argued that Parliament is bound by Article 1 of the Constitution to act within constitutional boundaries and that creation of a commission is a preserve of Part XVIII of the Constitution. That by creating a commission through ordinary legislation, Parliament had overstepped its constitutional boundaries.

- 2.6 Further, that not only is Article 266 of the Constitution clear in its definition of the word “commission”, Articles 216-237 of the Constitution provide an exhaustive list of commissions to be established under the Constitution. The MRC is not one of the established commissions.
- 2.7 Referencing well-known Commonwealth cases such as **Attorney General of the Commonwealth v The Queen**<sup>1</sup> and **R v Kirby; Ex parte Boilermakers’ Society of Australia**<sup>2</sup>, the Petitioner contended that the Zambian Legislature cannot override the constitutional definition of a “commission”.
- 2.8 The Petitioner further argued that by calling the MRC a commission, the Legislature had bestowed a status on the MRC that is reserved solely for commissions established under the Constitution. According to him, the Legislature could only have operated within constitutional boundaries by creating an agency, authority, or board. Having created a commission, the Legislature’s actions were an affront to the Constitution.
- 2.9 At the hearing of the matter on 23<sup>rd</sup> April 2026, the Petitioner solely relied on the Petition, Affidavit Verifying Facts, List of Authorities and Skeleton Arguments filed in relation to the matter.

### 3.0 Respondent's case

- 3.1 In the Answer and the Affidavit in opposition filed by the Respondent, it was averred that the Petition is misconceived as it does not state how the establishment of the MRC contravened Articles 216, 238 and 239 of the Constitution. It was submitted that Part XVIII of the Constitution is not an exhaustive list of commissions and that the Constitution does not place any limitation on the number of commissions to be established.
- 3.2 The Respondent's Skeleton Arguments addressed two issues. On the issue of whether Part XVIII of the Constitution is an exhaustive list of commissions, the Respondent's position was in the negative. It based this position on the plain reading of Article 216 of the Constitution which sets out commissions established in the Constitution without prejudice to any other commissions established by Parliament. Further that the definition of the word "commission" in Article 266 is for purposes of guiding and aiding the interpretation of the Constitution.
- 3.3 The second issue related to whether section 5 of the Act offends the Constitution in scope or substance. It was the Respondent's position that the Petitioner had not demonstrated the substantive inconsistency between section 5 of the Act and Articles 216 and 217 of the Constitution. The Respondent further pointed out the creation,

through statute, of the Securities Exchange Commission and the Competition and Consumer Protection Commission.

- 3.4 Dismissing the petitioner's reliance on *R v Kirby; Ex-parte Boilermakers' Society of Australia*<sup>2</sup> the Respondent contended that the case was concerned with the exercise of judicial powers by a non-judicial body, while the Petition at hand does not relate to exercise of powers by the MRC. The challenge is limited to its establishment and is therefore distinguishable.
- 3.5 In oral augmentation, Mr Chipulu on behalf of the Respondent submitted that the use of the term "commission" in reference to a commission established under a piece of legislation does not amount to contravention of the Constitution. To constitute a constitutional contravention, it has to be shown that the functions of the MRC were in conflict with the functions of commissions established under the Constitution.
- 3.6 Pointing out the existence of other commissions under ordinary legislation such as the Securities Exchange Commission and the Competition and Consumer Protection Commission, Mr. Chipulu argued that there was nothing unconstitutional about Section 5 of the Act.
- 3.7 It was Mr. Chipulu's further argument that Part XVIII of the Constitution does not lay out an exhaustive list of commissions and

that the Petitioner's reliance on *R v Kirby; Ex-parte Boilermakers' Society of Australia*<sup>2</sup> was misplaced. That while that case interrogates the question of whether an arbitral body can exercise judicial functions, the case at hand does not involve the functions of the MRC.

3.8 Responding to a question by the Court on the purpose of section 19 of Act no. 1 of 2016 which provides that all commissions existing before the enactment of Act no. 2 of 2016 would be considered as established under the Constitution, Mr. Chipulu submitted that the purpose behind those transitional provisions was to remove doubt as to legal existence of constitutional commissions prior to the 2016 constitutional amendments. This, according to Mr. Chipulu, did not restrict Parliament from establishing commissions through Acts of Parliament.

3.9 In yet another response to a question of the Court on the absence of any proscription under Part XVIII of the Constitution on the establishment of commissions under pieces of legislation, Mr. Chipulu submitted that the fact that the Constitution has not closed off the list of commissions was significant. He ended by submitting that the Petition ought to be dismissed as the Petitioner had failed to demonstrate how the mere use of terminology was inconsistent with the Constitution.

#### **4.0 Petitioner's Reply**

4.1 The Petitioner filed his Reply in Court. He maintained the position set out in the Petition.

4.2 In oral reply, the Petitioner submitted that Article 266 of the Constitution defined the word "commission" in a restrictive and exhaustive manner. Post 2016, no commissions are to be established outside those stated in the Constitution. It was the Petitioner's view that Article 266 is meant to guide the Executive so that it does not create commissions not provided for by the Constitution.

4.3 When questioned by the Court on the application of the word "commission" in Article 266 of the Constitution, the Petitioner maintained that by virtue of the transitional provisions, the definition covers commissions established before 2016. In so stating, the Petitioner admitted that there was no provision in the Constitution that limited the establishment of commissions to those provided for in Part XVIII of the Constitution.

#### **5.0 Analysis and Determination**

5.1 We have thoughtfully considered the Petition, Answer, Affidavit evidence and skeleton arguments proffered by the parties. The case is calling on us to determine the constitutionality of section 5 of the Act in the light of Part XVIII and Article 266 of the Constitution.

It is the Petitioner's position that section 5 of the Act is unconstitutional on account that it establishes a commission which is not among the list of commissions established under Part XVIII of the Constitution. That by so enacting, Parliament acted outside the scope of its constitutional bounds. The Respondent has opposed the position taken by the Petitioner by arguing that Part XVIII is not an exhaustive list of commissions.

5.2 In addressing the issue for determination, we wish to restate that it is trite law that the Constitution is the supreme law of the land and any written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency. This principle of constitutional supremacy is provided for under Article 1(1) of the Constitution and it states as follows:

**1.(1) This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.**

5.3 This constitutional supremacy principle was reaffirmed by this Court in the case of **Dipak Patel v Minister of Finance and The Attorney General**<sup>3</sup> where we stated as follows:

**The first principle, which is settled by the Constitution itself in Article 1(1) of the Constitution, is that the Constitution is the supreme law of this country and therefore, ranks above all other laws. Every other written law derives its authority from the**

**Constitution and is therefore subject to the Constitution. Any law which is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency.**

5.4 That said and as is our practice, we shall begin with the interpretation approach. In our jurisdiction, the Constitution gives clear guidance on how it must be interpreted. Article 267(1) provides that:

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

- (a) Promotes its purposes, values and principles;**
- (b) Permits the development of the laws; and**
- (c) Contributes to good governance.**

5.5 Comparative constitutional case law indicates that the purposive constitutional interpretation rule has now become firmly entrenched. Where a court reads a constitutional text literally, it risks missing the spirit and purpose of the provision in question. Thus, in the case of **Attorney General of Trinidad and Tobago v Whiteman<sup>4</sup>**, the Judicial Committee of the Privy Council implored the Courts to construe the Constitution “not in a narrow and legalistic way but broadly and purposively so as to give effect to its spirit ...”

5.6 The Constitution must also be read as a whole. This principle was reaffirmed in the case of **Zambia National Commercial Bank Plc v Martin Musonda and 58 Others<sup>5</sup>** where we held that:

**When interpreting the Constitution, all the relevant provisions bearing on the subject matter for interpretation should be**

considered together as a whole in order to give effect to the objective of the Constitution.

5.7 Similarly, and in the case of **Major General David Tinyefuza v The Attorney General of Uganda, the Constitutional Court of Uganda**<sup>6</sup> stated as follows:

The entire Constitution was to be read as an integral whole with no one provision destroying the other but each sustaining the other.

5.8 In determining issues in this matter, we will therefore, look at the relevant provisions bearing on the issue in contention as a whole and purposively in order to give effect to the objectives of the Constitution.

5.9 Part XVIII of the Constitution establishes eighteen (18) commissions. They include service commissions, regulatory commissions, and investigative commissions. This Part sets out their specific functions and general provisions concerning the qualifications of members, the powers of the commission, independence and general principles applicable to commissions established under the Constitution.

5.10 Article 266 of the Constitution then provides that the word "commission" as used in the Constitution means a commission established under Part XVIII.

5.11 It is clear that Part XVIII does establish a series of commissions. Having been created under the Constitution, the commissions enjoy

more permanence and autonomy. Under Article 216, they are independent and not subject to the control of a person or an authority in the performance of their functions. They are created under the Constitution to promote democracy, good governance and rule of law. The **Mung'omba Constitution Review Commission Report (2005)** said, in relation to investigative commissions, that,

**there was need for such bodies to enjoy the necessary autonomy and independence from the executive and that this be guaranteed in the Constitution.**

Not all Commissions, however, need this level of permanence or autonomy. Commissions may also be set up by Parliament to regulate specific areas of concern. Such commissions are more easily altered and influenced by the Government.

However, the question we have to determine is whether the establishment of commissions in Zambia is restricted to those set out in the Constitution.

5.12 As a starting point, we see nothing in Part XVIII that restricts powers of the Legislature from constituting commissions under ordinary pieces of legislation. Article 62 of the Constitution places legislative powers in Parliament to enact laws that foster democracy and good governance. Any limitation on this power has to be expressly laid out. It cannot be inferred. Article 267 of the Constitution extols us to

interpret the Constitution in a way that upholds the spirit and purpose of each provision as we stated in **Munir Zulu v Attorney General and 2 Others**<sup>7</sup>.

5.13 Accepting the Petitioner's position would mean that no commission would be constituted, save for those set out in the Constitution. This would not only be impractical but would also affect the legality of the existing commissions created under pieces of legislation. For instance, the Zambia Law Development Commission (1996), Citizen Economic Empowerment Commission (2006), Competition and Consumer Protection Commission (2010) and the Securities Exchange Commission (1993) are all creatures of statute and are not mentioned in the Constitution.

5.14 The position advanced by the Petitioner in this matter brings to mind a like argument that arose in **Elijah Simbai v Zambia Institute of Advanced Legal Education**<sup>8</sup>. In that case, a party had argued that by virtue of Article 235 of the Constitution establishing three investigative authorities, the Zambia Institute of Advanced Legal Education (ZIALE) student rules that gave the governing body of ZIALE powers to investigate student misconduct was ultra vires the Constitution. We refused to accept that position on the basis that bodies other than the three stated investigative authorities in Article 235 of the Constitution also had investigative functions. To accept

the argument that only those three investigative authorities would carry out investigations would have amounted to interpreting Article 235 in isolation and ignore the reality that constitutional and non-constitutional bodies could carry out investigations. It is this isolative manner of interpretation we are staying clear of in this matter as well.

5.15 Further, we have reviewed the Report of the Technical Committee on Drafting of the Zambian Constitution dated 30<sup>th</sup> April, 2012. The rationale indicated on page 236 of the report makes no mention of Part XVIII being an exhaustive list of commissions. What is clear is that the framers of the Constitution intended to provide for entrenched specialised public services and commissions due to their role as key institutions in a constitutional dispensation. For avoidance of doubt, the committee noted thus:

**The rationale for the Article is that, there is need for the Constitution to make provision for continued establishment of specialised public services and commissions with their membership, powers and functions over the various sectors of Government, such as civil service and the teaching service. The committee observes that the service commissions are key institutions in any constitutional dispensation, as they serve the purpose of protecting and enforcing the independence of the public service. The committee, therefore, resolves to make provision in the Constitution for continued establishment of specialised public services and commissions.**

5.16 We do not see any intention on the part of the framers express or implied restricting the creation of commissions to Part XVIII of the Constitution.

5.17 Furthermore, we note that during the hearing of this matter, the Respondent, upon being prompted by the Court, also made reference to section 19 of the Constitution of Zambia, Act No. 1 of 2016, otherwise known as the Transitional Clauses. It states that:

**The Commissions existing immediately before the effective date shall continue to exist as if established under the Constitution as amended.**

5.18 It was the Respondent's submission that the purpose of transitioning the existing commissions under this provision was to ensure that there was no ambiguity on the continued existence and operations of the existing commissions upon the coming into effect of the 2016 amendments to the Constitution.

5.19 On the issue of the purpose of transitional clauses, the learned authors of **Bennion on Statutory Interpretation** at section 96 stated thus:

**Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition...**

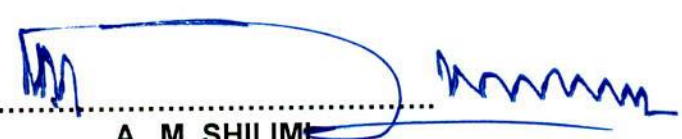
5.20 It is our considered view that the purpose of section 19 of the Act No. 1 was to provide for the transitioning of the constitutional

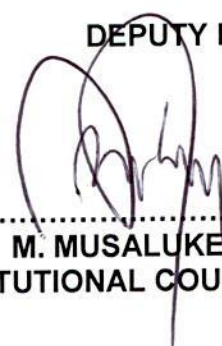
commissions that existed prior to the coming into effect of the 2016 amendments to the Constitution and has nothing to do with restricting Parliament from enacting any legislation creating a commission outside the realm of Part XVIII of the Constitution or turning Statutory Commissions into Constitutional Commissions. Should that have been the intention of the framers of the Constitution, Part XVIII of the Constitution would have expressly stated so.

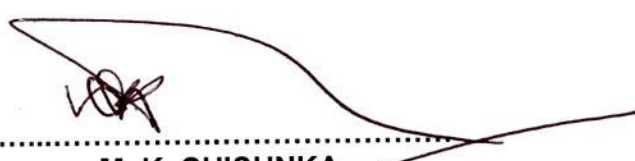
5.21 That said, this Petition fails for lack of merit and is accordingly dismissed.


5.22 We order the parties to bear their costs.

  
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**M. M. MUNALULA, JSD**  
**PRESIDENT – CONSTITUTIONAL COURT**

  
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**A. M. SHILIMI**  
**DEPUTY PRESIDENT – CONSTITUTIONAL COURT**

  
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**M. MUSALUKE**  
**CONSTITUTIONAL COURT JUDGE**

  
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**M. K. CHISUNKA**  
**CONSTITUTIONAL COURT JUDGE**

  
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**K. MULIFE**  
**CONSTITUTIONAL COURT JUDGE**