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

2026/CCZ/002

IN THE MATTER OF: THE RESOLUTIONS AND RECOMMENDATIONS MADE BY THE HOUSE OF CHIEFS ON THE 10th -14th NOVEMBER, 2024 AT THE 8th MEETING OF THE 6th HOUSE OF CHIEFS

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA
30 OCT 2026
REGISTRY 5
P.O. BOX 50067, LUSAKA

IN THE MATTER OF: THE DECISION BY THE PERMANENT SECRETARY OF THE LOCAL GOVERNMENT AND RURAL DEVELOPMENT (TECHNICAL SERVICES) AND THE PERMANENT SECRETARY, NORTHERN PROVINCE TO ADOPT AND IMPLEMENT THE RESOLUTION AND RECOMMENDATIONS OF THE HOUSE OF CHIEFS

AND

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA ACT No. 2 OF 2016, ARTICLES 1(1), 128, 165(1), 169(1), 196(5) AND 267

BETWEEN:

SENIOR CHIEF TAFUNA CHIMWANDO II — PETITIONER
(In his capacity as senior Chief Tafuna Chimwando II Mwine Bulungu of the Lungu speaking people of Northern Province of the Republic of Zambia)

AND

THE ATTORNEY GENERAL — 1st RESPONDENT

THE HOUSE OF CHIEFS — 2nd RESPONDENT

THE PERMANENT SECRETARY — 3rd RESPONDENT

MINISTRY OF LOCAL GOVERNMENT AND RURAL DEVELOPMENT (Technical Services)

THE PERMANENT SECRETARY (Northern Province) — 4th RESPONDENT

JULIUS KAOMA CHISHETA (In his capacity as Chief Chitoshi Mwandama of the Lungu Speaking people) — 5th RESPONDENT

CORAM: **MULONGOTI, MULIFE, SILOKA AND IMBWAE, JJC ON 8th AND 21st SEPTEMBER, 2026 AND 30th OCTOBER, 2026.**

For the Petitioners:	Mr. M. Haimbe of Messrs Haimbe Legal Practitioners with Mr. E. B. Kaluba and Mr. M Kasheta of Onesimus Legal Practitioners
For the 1st, 2nd, 3rd and 4th Respondents:	Mr. K. Sakachiva and Mr. F. Simonda (State Advocates) – Attorney General's Chambers
For the 5th Respondents:	Mr. A. Kasolo of Mulilansolo Chambers

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MAJORITY JUDGMENT

Mulife, JC, delivered the majority judgment of the Court.

Cases referred to:

1. Litunga of Barotseland and 3 Others v Attorney General 2020/CCZ/009
2. Bernard Shajilwa, Dickson Bornface Mutamfu, Goodson Kabulayi, Doris Kafumukache and Lawrence Mbomena v Attorney General, Evans Nyeleti, Micheal B. Pwete and Eprhaim M. Mateyo 2018/CCZ/004
3. Bozy Simutanda (As Attorney for His Royal Highness Chief Tafuna of the Tafuna Chieftaincy) v Geoffrey Kaoma (As Chief Mukupa Kaoma) and Mathews Makungu Siame 2020/CCZ/002
4. Lucky Mutambo v Attorney General 2023/CCZ/007
5. John Sangwa v Attorney General, 2023/CCZ/006
6. Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick, 2020/CCZ/A002
7. Gervas Chansa v The Attorney General, 2019/CCZ/004
8. Regina Police Assn Inc v Regina (City) Board of Police Commissioners, 2000 SCC 14; [2000] 1 SCR 360
9. MacKay v Manitoba (1989) 2 SCR 357

Legislation referred to:

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

Works referred to:

Marilyn L. Pilkington (19910, "Equipping Courts to Handle Constitutional Issues: The Adequacy of the Adversarial System and its Techniques of Proof" in Special Lectures of the Law Society of Upper Canada: Applying the Law of Evidence. Scarborough: Carswell.

Introduction

[1] This is the majority judgment of the Court. It concerns a petition filed into this Court on 23rd March, 2026 by Senior Chief Tafuna Chimwando II, acting in his capacity as Senior Chief Tafuna Mwine Bulungu Chimwando II of the Lungu-speaking people of the Northern Province of the Republic of Zambia (the petitioner). The petition was filed pursuant to Articles 1(1), 128(1), 165(1), 169(1), 196(5) and 267 of the Constitution of Zambia, as amended by Act No. 2 of 2016 (the Constitution). It was accompanied by an affidavit verifying facts sworn by the petitioner, together with a list of authorities and skeleton arguments.

[2] The petition seeks two distinct sets of relief. The first set invites this Court to determine several constitutional questions, namely:

(i) whether the House of Chiefs (the 2nd respondent) has constitutional authority to adjudicate or determine disputes relating to the removal of chiefs;

(ii) whether the decision of the 2nd respondent declaring that the petitioner did not act in accordance with the traditions and

customs of the Lungu people, and the ensuing recommendations, exceeded its constitutional mandate;

(iii) whether the 2nd respondent has constitutional authority to recognise chiefs;

(iv) whether the impugned decision violates the constitutional authority of traditional leadership and customary governance;

(v) whether the decision is unconstitutional, illegal, null and void; and

(vi) whether the decisions and actions of the 3rd and 4th respondents, taken pursuant to the 2nd respondent's resolutions and recommendations, are legally valid.

[3] The second set of relief is for:

(i) a declaration that the 2nd respondent acted *ultra vires* the Constitution in declaring that the petitioner did not act in accordance with the customs and traditions of his people;

(ii) a declaration that the 2nd respondent has no constitutional mandate to adjudicate disputes relating to the removal and installation of chiefs;

(iii) a declaration that the impugned decision is unconstitutional, illegal, null and void;

(iv) an order quashing and setting aside the resolution and recommendations of the 2nd respondent;

(v) a declaration that the actions and decisions of the 3rd and 4th respondents are invalid and null and void *ab initio*;

(vi) an order quashing and setting aside the decisions and actions of the 3rd and 4th respondents;

(vii) an order compelling Julius Kaoma Chisheta (5th respondent) to vacate the palace in the Chitoshi Chiefdom and to cease acting as Chief Chitoshi Mwandama;

(viii) costs; and

(ix) any other relief the Court may deem fit.

The Parties

[4] The petitioner is the traditional leader of the Lungu-speaking people of the Northern Province. The 1st respondent is the Attorney General, sued pursuant to Article 177(1) of the Constitution. The 2nd respondent is the House of Chiefs, established under Article 169 of the Constitution

to address matters relating to customary law and practice. The 3rd respondent is the public officer responsible for the administration of chiefs' affairs in Zambia, while the 4th respondent is the public officer charged with the management of government affairs in the Northern Province. The 5th respondent, is Chief Chitoshi Mwandama of the Lungu-speaking people of the Northern Province, against whom an order to cease acting as Chief Chitoshi and vacate the palace, is sought.

The petitioner's case

[5] The factual background is set out in the petition and the affidavit verifying facts. In summary, the petitioner, avers that as Senior Chief of the Lungu people, he exercises authority to administer the Lungu Chiefdom in accordance with its established culture, customs and traditions.

[6] His authority includes disciplining, dethroning and installing subordinate chiefs within the Lungu Chiefdom, pursuant to Lungu customary law.

[7] In June 2024, during an assembly of the Lungu Royal Establishment, the petitioner exercised his disciplinary authority by dethroning the 5th respondent from the position of Chief Chitoshi Mwandama on grounds

of misconduct. He replaced him with one Willie Chama Pembamoto. However, the 5th respondent disregarded this decision and continued to occupy the chieftaincy and palace.

[8] Following the dethronement of the 5th respondent and the installation of Mr. Pembamoto, the petitioner issued written correspondence to, among others, the 3rd and 4th respondents notifying them of the changes. These communications were disregarded, and no action was taken to give effect to the petitioner's decision.

[9] The petitioner contends that the 2nd respondent subsequently and unlawfully interfered with his customary authority by purporting to review his decision concerning the Chitoshi Chieftaincy.

[10] After conducting that review, the 2nd respondent concluded that the dethronement and subsequent enthronement had not been undertaken in accordance with established culture, customs and traditions. It resolved that the 5th respondent remained Chief Chitoshi Mwandama of the Chitoshi Chiefdom in Lunte District.

[11] Acting upon a minute from the 3rd respondent, the 4th respondent formally communicated this position to the 5th respondent by letter dated 4th March, 2026.

[12] The petitioner alleges that this sequence of events revealed unlawful interference by the 1st,2nd, 3rd and 4th respondents, with his exclusive constitutional authority to administer the Lungu Chiefdom in accordance with the Lungu culture, customs and traditions.

[13] This alleged interference prompted the filing of the petition.

[14] In his skeleton arguments, the petitioner submits that the 2nd respondent acted outside its constitutional mandate by deliberating upon matters concerning the dethronement and enthronement of chiefs and by communicating its resolutions to the 3rd respondent. He argues that the Constitution does not confer upon the 2nd respondent any authority to review his decisions or to adjudicate issues relating to the removal or installation of chiefs.

[15] Consequently, he asserts that the decisions of the 3rd and 4th respondents affirming the 5th respondent as Chief Chitoshi Mwandama rest upon an unlawful foundation and are therefore void.

[16] The petitioner further maintains that, as custodian of the culture, customs and traditions of the Lungu-speaking people, he possesses exclusive authority to administer the Chiefdom, including the dethronement and enthronement of chiefs. In support of this position,

he relies on Article 165(1) of the Constitution and section 10 of the Chiefs Act, Chapter 287 of the Laws of Zambia.

[17] He also places reliance on **Litunga of Barotseland and 3 Others v Attorney General**[1], in which this Court affirmed that the power to administer chiefdoms lies exclusively with traditional institutions in accordance with the culture, customs and traditions of the respective chiefdoms. He contends that his removal of the 5th respondent was a lawful exercise of this authority.

[18] In the result, the petitioner argues that the impugned decisions of the 2nd, 3rd and 4th respondents interfered with the proper administration of the Lungu Chiefdom and undermined his authority as custodian of its culture, customs and traditions. He submits that the decisions purporting to regulate the dethronement and enthronement of chiefs within his Chiefdom are unconstitutional, unlawful and should be declared null and void.

The 1st, 2nd, 3rd and 4th Respondents' Case

[19] On 17thJuly, 2026, the 1st, 2nd, 3rd and 4th respondents filed a joint answer, supported by an affidavit sworn by Njekwa Namushi.

[20] The thrust of the 1st, 2nd, 3rd and 4th Respondents' case is that the petitioner lacked authority to install, dethrone or replace a chief in a

chiefdom other than his own. They contend that such powers lie exclusively with the concerned royal establishment, and that the purported removal of the 5th respondent was not undertaken in accordance with the culture, customs and traditions of the Chitoshi Chiefdom.

[21] The 1st, 2nd, 3rd and 4th respondents further assert that the actions of the 2nd respondent—including convening meetings and adopting resolutions on the dispute between the petitioner and the 5th respondent—were undertaken pursuant to its constitutional mandate. They maintain that the conveyance of the 2nd respondent's recommendations from the 3rd respondent to the 4th respondent was effected in accordance with established Government procedures.

[22] On this basis, the 1st, 2nd, 3rd and 4th respondents argue that the petitioner is not entitled to any of the reliefs sought.

[23] The affidavit evidence of the 1st, 2nd, 3rd and 4th respondents is that, on 17th May, 2024, the 2nd respondent convened a meeting in Lusaka to address a customary dispute said to have arisen between the petitioner and the 5th respondent.

[24] A committee of the 2nd respondent received submissions from both parties, but the meeting did not yield a conclusive resolution. It was

agreed that a further meeting would be convened at provincial level to include all interested parties.

[25] The petitioner was present at, and participated in, all meetings convened in Lunte District and at the Ministry of Local Government and Rural Development.

[26] The committee thereafter submitted its report to the full House of the 2nd respondent, comprising five members from each of Zambia's ten provinces. At a subsequent meeting, the committee's findings and recommendations were adopted. The adoption resulted in a formal conclusion that the petitioner had not conducted himself in accordance with the known and historical culture, customs and traditions governing the removal and installation of Chief Chitoshi.

[27] The recommendations were communicated to the 4th respondent for onward conveyance to the concerned parties. The conveyance was effected by the 3rd respondent in accordance with established Government correspondence procedures.

[28] The 1st, 2nd, 3rd and 4th respondents emphasise that the 5th respondent is the duly recognised Chief Chitoshi of the Lungu-speaking people of Mporokoso (now Lunte) District, such recognition having been conferred under Statutory Instrument No. 108 of 2011.

[29] In their skeleton arguments, the 1st, 2nd, 3rd and 4th respondents rely on Article 169 of the Constitution to assert that the 2nd respondent's role is consultative and advisory. That Article 169(5)(c) and (f) of the Constitution empowers the 2nd respondent to initiate, discuss and decide on matters relating to customary law and practice, and to advise Government on traditional and customary matters.

[30] They argue that the 2nd respondent's involvement in the dispute was confined to its constitutional mandate of considering customary matters and providing guidance to Government. They contend that its actions did not constitute installation of a chief.

[31] It was further argued that the actions of the 2nd and 3rd respondents were directed at preserving the integrity of traditional dispute-resolution processes and advising Government as to whether the purported dethronement and installation were undertaken in conformity with the historically known customs of the Chitoshi Chiefdom.

[32] The 1st, 2nd, 3rd and 4th respondents also advanced arguments relating to the customs governing the selection of chiefs in the Chitoshi Chiefdom, the recognition of the 5th respondent under Statutory Instrument No. 108 of 2011, and the powers of paramount chiefs. As

these matters do not raise constitutional issues requiring determination by this Court, we do not recite them.

[33] The 1st, 2nd, 3rd and 4th respondents conclude that the 2nd and 3rd respondents acted within the constitutional framework and the portfolio functions governing traditional leadership. They contend that the actions complained of were lawful, constitutionally compliant, and directed at safeguarding the customary process for resolving the chieftaincy dispute.

[34] They accordingly pray that the petition be dismissed with costs.

The 5th respondent's case

[35] The 5th respondent filed his answer, together with an affidavit in support, on 9thJuly, 2026.

[36] He contends that this Court lacks jurisdiction to hear and determine, at first instance, a petition whose core subject matter concerns culture, customs and traditions.

[37] He further asserts that the petitioner did not comply with the Lungu culture, customs and traditions when he purported to withdraw the 5th respondent's chieftaincy.

[38] The 5th respondent argues that the 2nd respondent possesses constitutional authority to decide matters relating to succession disputes under Article 169(5)(c) of the Constitution.

[39] He avers that the committee of the 2nd respondent received and considered evidence relating to the culture, customs and traditions of the Chitoshi Chieftainship and, relying on that evidence, arrived at the recommendations now impugned.

[40] In his affidavit in opposition, the 5th respondent deposes that the petitioner does not possess authority, acting alone, to dethrone or appoint a chief in another chiefdom, such powers being reserved to the Royal Family or Electoral College.

[41] That he was selected by the Lungu Electoral College on 30thMay, 2010, installed by the Lungu Royal Establishment, and thereafter recognised by the President of the Republic of Zambia under Statutory Instrument No. 108 of 2011.

[42] That he remains the legally recognised Chief Chitoshi Mwandama, and that the petitioner's unilateral actions purporting to remove him and appoint Mr. Willie Chama Pembamoto were not undertaken in accordance with the Lungu culture, customs and traditions.

[43] In his skeleton arguments, the 5th respondent argues that this Court lacks jurisdiction to hear and determine this petition. That therefore the petition should be dismissed. In support of this argument, he relies on our decisions in **Bernard Shajilwa, Dickson Bornface Mutamfu, Goodson Kabulayi, Doris Kafumukache and Lawrence Mbomena v Attorney General, Evans Nyeleti, Micheal B. Pwete and Ephraim M. Mateyo**[2], **Bozy Simutanda (As Attorney for His Royal Highness Chief Tafuna of the Tafuna Chieftaincy) v Geoffrey Kaoma (As Chief Mukupa Kaoma) and Mathews Makungu Siame**[3] and **Lucky Mutambo v Attorney General**[4].

[44] Although the 5th respondent sets out issues for determination, he did not address them. Instead, he argues that the 2nd respondent merely mediated the dispute between himself and the petitioner, consistent with Article 118(2)(d) of the Constitution.

[45] He submits that mediation is a constitutional mandate, and that the 2nd respondent's facilitation of a process to which both parties submitted cannot be impugned as unconstitutional. He argues that the 2nd respondent acted within its powers in making recommendations to the 3rd and 4th respondents.

[46] He further submits that the petitioner has not demonstrated which constitutional provisions were allegedly contravened by the 1st, 2nd, 3rd and 4th respondents following the mediation.

[47] On this basis, he argues that the petition is devoid of merit and ought to be dismissed with costs.

The Petitioner's Replies to the Respondents' Answers

[48] In his replies to the 1st, 2nd, 3rd and 4th respondents' answers on the one hand and the 5th respondent's answer on the other, filed into Court on 10th September, 2026 and 17thJuly, 2026, respectively, the petitioner maintains that he is seeking only the interpretation of the cited constitutional provisions and the consequential reliefs necessary to ensure conformity with the Constitution. He denies seeking the adjudication of a succession dispute.

[49] The petitioner reiterates that Article 169(5)(c) of the Constitution does not confer upon the 2nd respondent any judicial or quasi-judicial authority. He contends that the 2nd respondent is a consultative and advisory body, not a court or tribunal.

[50] The petitioner further asserts that the impugned recommendations of the 2nd respondent—and the reliance placed upon them by the 3rd and

4th respondents—were null and void, as they were founded on actions of the 2nd respondent that were *ultra vires* its constitutional mandate.

[51] In his skeleton arguments in reply which were only directed to the 5th respondent's answer, the petitioner reiterates that the 2nd respondent acted outside its constitutional mandate when it purported to adjudicate matters relating to his authority as Senior Chief.

[52] The petitioner submits that the 2nd respondent derives its powers solely from the Constitution. Relying on **John Sangwa v Attorney General**[5], he argues that any function undertaken outside that mandate is a nullity.

[53] The petitioner contends that Article 169 of the Constitution does not confer upon the 2nd respondent any judicial or adjudicative powers. Thus the 2nd respondent's purported determination of matters relating to the removal or installation of a chief is *ultra vires* and void *ab initio*.

[54] In response to the 5th respondent's reliance on Article 118(2)(d) of the Constitution, the petitioner argues that the 2nd respondent does not constitute a traditional dispute resolution mechanism within the meaning of that provision.

[55] That the meeting convened by the 2nd respondent, together with the resolutions and recommendations arising from it, are null and void *ab initio*.

Hearing

[56] At the hearing on 21st September, 2026, the parties substantially reiterated the positions already set out in their written submissions. We therefore consider it unnecessary to restate them in this judgment except to state that Counsel for the petitioner informed the Court that the petitioner had abandoned relief vii set out at paragraph 3 of this judgment. Counsel further clarified that there is no similar matter between the parties pending in the High Court.

Consideration and determination

[57] We have considered the petition, the affidavit verifying facts, and the petitioner's replies to the respondents' answers. We have equally considered the answers filed by the respondents together with the respective supporting affidavits. We have further paid due attention to the parties' respective lists of authorities and skeleton arguments, and the submissions made at the hearing.

[58] For reasons that will become apparent as the judgment unfolds, we shall not pronounce ourselves on the questions for interpretation posed

by the petitioner. The questions are set out at paragraph 2 of this judgment.

[59] We begin our determination by considering the preliminary issue raised by the 5th Respondent namely, whether this Court has jurisdiction to hear and determine the present petition. We adopt this course because jurisdiction is foundational and without it, the Court cannot take any further step in the matter.

[60] Authority to determine whether we have jurisdiction to hear and determine this petition, is conferred under Article 128(1)(e) of the Constitution which states that:

> **128. (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear...**
>
> **(e) whether or not a matter falls within the jurisdiction of the Constitutional Court.**

[61] Article 1(5) of the Constitution provides that a matter relating to the Constitution shall be heard by this Court. Article 128(1)(a) and (b) of the Constitution further provide that this Court has jurisdiction to hear matters relating to the interpretation, violation or contravention of the Constitution.

[62] In **Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick**[6], we stated that the Constitutional Court is a specialised court

established to resolve only constitutional questions, and that all questions of general nature must proceed through the courts of general jurisdiction.

[63] The jurisdiction of this Court is therefore confined to the determination of constitutional questions that are properly constituted and legitimately brought before it.

[64] In **Gervas Chansa v The Attorney General**[7], we adopted the definition of a constitutional question in **Black's Law Dictionary (9th ed.)**, which describes it as a legal issue resolved by the interpretation of the Constitution rather than by reference to an ordinary statute.

[65] Thus, a constitutional question is one whose resolution necessarily turns upon the interpretation of the Constitution. Where a matter does not invite the Court to interpret or apply the Constitution in its resolution, it follows that it does not raise a constitutional question and would accordingly be improperly before this Court.

[66] Article 128(3) of the Constitution empowers a person alleging contravention of the Constitution to petition this Court for redress. It states as follows:

> **Subject to Article 28, a person who alleges that –**
> **(b) An Act of Parliament or Statutory instrument;**

(c) An action, measure or decision taken under any law;
(d) An act, omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.

[67] It is principally on the basis of Article 128(3) of the Constitution that the petitioner has instituted the present petition. Herein, he is alleging that the 2nd respondent has contravened Articles 165(1), 169(1) and 196 (5) of the Constitution when it reversed the decision of the petitioner to dethrone the 5th respondent, and in doing so influenced the 3rd and 4th respondents, through its stated decision.

[68] Notwithstanding the alleged constitutional breaches, we are of the considered view that the factual or foundational issue underlying the entire dispute concerns the succession and dethronement to the Chitoshi Chieftaincy. More specifically, the dispute relates to the manner the petitioner allegedly dethroned the 5th respondent and replaced him with Willie Chama Pembamoto as Chief Chitoshi.

[69] We have come to this conclusion having found that the evidence of all the key parties, namely the petitioner, 2nd and 5th respondents, situate the dispute in the culture, customs and traditions of the Lungu people. Thus, according to the petitioner, he dethroned the 5th respondent from the Chitoshi chieftaincy pursuant to his powers conferred by the

culture, customs and traditions of the Lungu people. This version is disputed by the 2nd and 5th respondents on the same grounds of culture, customs and traditions. According to the 2nd and 5th respondents, the purported dethronement was conducted outside the requisite culture, customs and traditions. More specifically, the 2nd respondent made its findings after receiving the evidence of the culture, customs and traditions governing succession to the Chitoshi chieftaincy. This is against the backdrop that the 2nd respondent was introduced into the dispute by the 3rd respondent in its capacity as advisor to the government on traditional and customary matters.

[70] With this background, we affirm that the underlying dispute is whether the dethronement of the 5th respondent and his replacement as Chief Chitoshi was done in accordance with the culture, customs and traditions of the Lungu people. Granted the 2nd respondent is a creature of the Constitution and statute, we are of the considered view however that the alleged contraventions of Articles 165(1), 169(1) and 196 (5) of the Constitution are merely consequential and cannot be validly considered in isolation from the underlying dispute on culture, customs and traditions. Doing so would be to determine *the* constitutional questions in a vacuum and would derogate from the

principles of constitutional adjudication which impose upon this Court, the primary duty of identifying the factual or foundational basis of the dispute and determining the dispute by reference to that foundation.

[71] In this regard, we are persuaded by the holding of the Supreme Court of Canada in **Regina Police Assn Inc v Regina (City) Board of Police Commissioners**[8], at paragraphs 25 and 29 where the Court held that:

> ... **to determine the essential character of the dispute, we must examine the factual context in which it arose, not its legal characterization...in light of the agreed statement of facts, this dispute clearly centres on discipline. The dispute began when Sgt. Shotton was advised that he would be charged with discreditable conduct pursuant to the regulations. He was also told that the Chief of Police intended to initiate disciplinary proceedings with a view to dismissal. Sometimes later, Sgt. Shotton was informed by the Chief of Police that discipline orders would be signed if notices of formal discipline proceedings were successful. It was in this factual context that Sgt. Shotton was given the option of resigning rather than being disciplined...the informal resolution of this disciplinary matter did not change its essential character.** (Emphasis is ours)

[72] We are further persuaded by the observations of Justice Peter Cory of the Supreme Court of Canada in **MacKay v Manitoba**[9] where his Lordship elaborated as follows:

> **Charter cases will frequently be concerned with concepts and principles that are of fundamental importance to Canadian society...decisions on these issues must be carefully considered as they will profoundly affect the lives of Canadians and all residents of Canada. In light of the importance and the impact these decisions may have in the future, the courts have every right to expect and indeed to insist upon the careful preparation and presentation of a factual basis**

> **in ...Charter cases...Charter decision should not and must not be made in a factual vacuum. To attempt to do so would trivialize the Charter and inevitably result in ill-considered technicality...the presentation of facts ...is essential to a proper consideration of Charter issues.**(Emphasis is ours)

[73] The same aspect is reflected in the academic literature by **Marilyn L. Pilkington (1991, "Equipping Courts to Handle Constitutional Issues: The Adequacy of the Adversarial System and its Techniques of Proof" in Special Lectures of the Law Society of Upper Canada: Applying the Law of Evidence. Scarborough: Carswell.** who observes that, in constitutional litigation, it is for the adjudicative process to ensure that the factual premises underlying the constitutional challenge are identified and tested.

[74] With that said, the fundamental question is therefore whether this Court has jurisdiction to determine whether the 5th respondent was dethroned in line with the culture, customs and traditions of the Lungu people.

[75] By our constitutional design, matters of succession, removal and installation of chiefs fall within the realm of the culture, customs and traditions of the people concerned. This is according to Article 165 of the Constitution which in relevant parts state as follows:

> **Article 165. (1) The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.**

[76] In **Bernard Shajilwa and 4 Others v Attorney General and 3 Others**[(2)], we held that the power to administer chiefdoms lies exclusively with traditional institutions, in accordance with their culture, customs and traditions.

[77] We reiterated this position in **His Royal Highness, the Litunga and 3 Others v The Attorney General**[1], wherein we further stated that matters to do with installation, discipline and administration of traditional matters remain to be practiced in accordance with the culture, customs and traditions of the respective chiefdom.

[78] We reiterate that the issues outlined above, squarely situate the dispute between the parties in the culture, customs and traditions of the Lungu people

[79] In light of Articles 1(5) and 128(1)(a) and (b) of the Constitution which confine our jurisdiction to matters that relate to the Constitution, this dispute on the dethronement of the 5th respondent based on the culture, customs and traditions of the Lungu people, is consequently outside the jurisdiction of this Court. In accordance with our holding in the case of **Bric Back**[6], the requisite jurisdiction lies with a court of competent general jurisdiction. Should a constitutional question arise

in such a court, it would then be referred to this Court in line with Article 128(2) of the Constitution.

[80] Accordingly, we shall not take any further step in the matter including stating our position on the questions for interpretation set out at paragraph 2 of this Judgment.

CONCLUSION

[81] The petition is dismissed for want of jurisdiction.

[82] Parties shall bear own costs.

.....
J.Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE

.....
K. MULIFE
CONSTITUTIONAL COURT JUDGE

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S.V. SILOKA
CONSTITUTIONAL COURT JUDGE

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G.M. IMBWAE
CONSTITUTIONAL COURT JUDGE

DISSENTING JUDGMENT

Mwandenga, JC, delivered the dissenting judgment of the Court.

Cases referred to:

1. Chishimba Kambwili v The Attorney General 2019/CCZ/009
2. Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick 2018/CCZ/A002
3. Gervas Chansa v Attorney General 2019/CCZ/004
4. Sean Tembo (Suing in his capacity as Party President of the Patriots for Economic Progress) v The Electoral Commission of Zambia 2022/CCZ/002
5. Miles Bwalya Sampa v Attorney General, ZCCM Investments Holdings Plc, Mopani Copper Mines Plc & Delta Mining Limited 2024/CCZ/0024

Legislation referred to:

1. The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Constitutional Court Rules, Statutory Instrument No. 37 of 2016
3. The Constitutional Court Rules, Statutory Instrument No. 33 of 2026

Other works referred to:

Bryan A. Garner, ed., Black's Law Dictionary, 9th ed. (St. Paul, MN: Thomson Reuters, 2009).

Introduction

[83] At the outset, the Court must satisfy itself that the matter lies within the bounds of its constitutional authority. Jurisdiction is a threshold inquiry that must be settled before any further adjudication may occur. Article 128(1)(e) of the Constitution vests this Court with the original and final jurisdiction to determine whether a matter falls within its competence,

making it both appropriate and necessary for the Court to resolve that question before proceeding.

[84] Although the 5th respondent raised the issue of jurisdiction, the other parties proceeded on the assumption that the Court was properly seized of the matter. Such an assumption cannot conclude the inquiry. Jurisdiction is antecedent to adjudication, and the absence of contest does not relieve the Court of its duty to be satisfied that it has authority to act.

Jurisdiction

[85] I have read the judgment of the majority with care, but I am unable, with deference, to concur in its conclusion that this Court lacks jurisdiction to hear and determine the petition. In my considered view, the petition properly invokes this Court's jurisdiction under Article 128(1)(a), (b) and (e) of the Constitution, as I shall explain in this dissenting judgment. With deference to the reasoning of the majority, their conclusion rests on a conception of the constitutional questions that is, in my view, more confined than the Constitution permits, and on a characterisation of the dispute as purely customary or traditional which, respectfully, does not fully capture its constitutional dimensions.

[86] Article 1(5) of the Constitution provides that any matter relating to the Constitution shall be heard by this Court. In **Chishimba Kambwili v The Attorney General**[1] this court affirmed that:

> **Article 1(5) of the Constitution expressly grants the Constitutional Court power to hear any matter relating to the Constitution. It is notable that Article 1(5) provides no exceptions....**

Article 128(1)(a) and (b) of the Constitution further confer upon this Court original and final jurisdiction to hear matters concerning the interpretation of the Constitution and allegations of its violation or contravention. Article 128(3) of the Constitution supplements this jurisdiction by permitting any person who alleges a contravention of the Constitution—whether through specified acts or omissions—to petition the Constitutional Court for redress.

[87] I am in full agreement with the majority that, as this Court stated in **Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick**[2], the Constitutional Court is a specialised court established to resolve constitutional questions, whereas matters of a general nature fall within the remit of courts of ordinary jurisdiction. I likewise agree with the majority that the jurisdiction of this Court is therefore confined to constitutional questions that are properly constituted and legitimately brought before it. I further agree with the majority's reliance on **Gervas**

Chansa v Attorney General[3], in which this Court adopted the definition of a constitutional question from **Black's Law Dictionary (9th ed.)**, describing it as a legal issue resolvable through the interpretation of the Constitution rather than by reference to ordinary legislation. In line with that definition, I agree with the majority that a constitutional question is one whose resolution necessarily turns on the interpretation or application of the Constitution; and where a petition does not require such interpretation or application, it does not raise a constitutional question and is, accordingly, improperly before this Court.

[88] The present matter arises from a sequence of events within the Chitoshi chiefdom: the dethronement of the 5th respondent, his continued occupation of the palace notwithstanding that dethronement, the subsequent installation of Mr. Willie Chama Pembamoto as Chief Chitoshi, and the petitioner's dissatisfaction with the position adopted by the 2nd respondent in relation to that dispute. These facts form the background against which the petitioner alleges that the 2nd respondent—acting as a constitutional institution—assumed and exercised powers which the Constitution does not confer upon it.

[89] By constitutional design, issues relating to the succession, removal and installation of chiefs indeed fall within the sphere of customary law, culture, customs and traditions of the people concerned. Article 165(1) of the Constitution recognises and guarantees the institution of chieftaincy together with the customary law, culture, customs and traditions that govern it, and provides that—

> **The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.**

[90] The Constitution does not, however, confer upon this Court original jurisdiction to adjudicate disputes concerning customary succession, removal or installation of chiefs. Jurisdiction is only engaged where it is alleged that a constitutional provision has been violated or that a constitutional body has acted outside the powers conferred upon it.

[91] Although the petition does not specify the particular constitutional provisions said to have been contravened—as required at the commencement of proceedings under the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (now Statutory Instrument No. 33 of 2026)—it nonetheless alleges that the 2nd respondent, described in the petition as a constitutional body established under Article 165 of the Constitution (although the correct provision is Article 169), acted *ultra*

vires its mandate by convening hearings, receiving evidence, making findings, and issuing determinations concerning the removal and installation of a chief.

[92] While imprecise pleading is not to be encouraged, and while pleadings must be approached with due regard to clarity and precision, Article 118(2)(e) of the Constitution cautions against undue reliance on procedural technicalities. In that light, the omission to specify particular provisions is not fatal in this matter. This case is distinguishable from **Sean Tembo (Suing in his capacity as Party President of the Patriots for Economic Progress) v The Electoral Commission of Zambia**[4], where the petition was dismissed not only for failing to identify the constitutional provisions allegedly violated, but also because it disclosed no facts capable of establishing any breach of the Constitution. Here, by contrast, and despite the petition's omission to identify the particular provisions allegedly breached, the petition nonetheless alleges conduct said to exceed the authority conferred upon the 2nd respondent by the Constitution, specifically Article 169 thereof.

[93] It is further alleged that the 3rd and 4th respondents treated the 2nd respondent's determinations as binding and acted upon them accordingly.

[94] Article 169 of the Constitution prescribes the functions of the 2nd respondent. Significantly, none of those functions confer authority to adjudicate succession disputes, determine the appointment or removal of chiefs, or issue binding directives in contests for traditional leadership. In so far as it is relevant, the Article provides that—

> **(1) There is established the House of Chiefs.**
>
> ...
>
> **(5) The functions of House of Chiefs are to—**
>
> **(a) consider and discuss a Bill relating to custom or tradition referred to it by the President, before the Bill is introduced into the National Assembly;**
> **(b) initiate, discuss and make recommendations to the National Assembly regarding the socio-economic development in the province;**
> **(c) initiate, discuss and decide on matters relating to customary law and practice;**
> **(d) initiate, discuss and make recommendations to a local authority;**
> **(e) make proposals on areas in customary law that require codification;**
> **(f) advise the Government on traditional and customary matters; and**
> **(g) perform such other functions as prescribed.**

[95] An allegation that a constitutional body has acted beyond the powers granted to it squarely engages this Court's jurisdiction under Article 128(1)(a) and (b) of the Constitution. These provisions empower the

Court to interpret the Constitution and to determine whether any person or authority has acted in accordance with it. They provide that—

> **Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear:**
>
> **(a) a matter relating to the interpretation of this Constitution;**
> **(b) a matter relating to a violation or contravention of this constitution;**
> ....

[96] Read together, these provisions make clear that jurisdiction is invoked whenever it is alleged that a constitutional office or institution has acted outside the limits prescribed by the Constitution.

[97] The petition raises a central constitutional question: whether the 2nd respondent acted within the scope of authority conferred upon it by Article 169 of the Constitution and not whether this Court has jurisdiction to determine whether the 5th respondent was dethroned in line with the culture, customs and traditions of the Lungu as has been put by the majority. See page J23 paragraph 74.

[98] To this end the majority finds that the issues in this matter "...squarely situate the dispute between the parties in the culture, customs and traditions of the Lungu people." (See page J24, paragraph 78). With deference to the majority, the fact that the dispute arises within a traditional governance setting does not divest it of its constitutional character. The question before this Court is not who ought to occupy

the chieftaincy, but whether a constitutional institution has purported to exercise powers which the Constitution does not vest in it. Once the conduct of a constitutional body is impugned on grounds of constitutional non-compliance, the inquiry is, by its very nature, constitutional.

[99] To hold otherwise would permit the 2nd respondent to expand its authority through administrative practice, institutional convenience or custom, notwithstanding the absence of constitutional authorisation. Such an approach would erode constitutional supremacy and unsettle the carefully structured allocation of powers established by the Constitution. Article 1(1) of the Constitution reinforces this position by affirming that the Constitution is the supreme law of the Republic and that any written law, customary law or customary practice inconsistent with its provisions is void to the extent of the inconsistency.

[100] This Court's majority reasoning in **Miles Bwalya Sampa v Attorney General, ZCCM Investments Holdings Plc, Mopani Copper Mines Plc & Delta Mining Limited**[5] illustrates the point. Although the underlying transaction in that matter concerned the acquisition of shares—a subject ordinarily governed by corporate and statutory law—the Court held that once it was alleged that the transaction

contravened Article 210 of the Constitution, the dispute raised a constitutional question properly falling within its jurisdiction. The determinative factor was not the sector in which the conduct occurred, but the allegation of constitutional violation.

[101] The same reasoning applies here. While succession to a chiefdom ordinarily falls within customary law, an allegation that a constitutional body exceeded the powers conferred upon it squarely engages this Court's jurisdiction. Constitutional institutions are creatures of the Constitution; their authority cannot be enlarged by custom, administrative convenience or long-standing practice.

[102] For the avoidance of doubt, jurisdiction is engaged whenever the conduct of a public or constitutional office-holder is challenged on grounds of constitutional non-compliance. The characterisation of a dispute cannot be determined solely by the cultural or social context in which the impugned conduct occurred. The proper inquiry is whether a violation of the Constitution is alleged and whether the relief sought necessitates constitutional interpretation or enforcement. In this matter, both requirements are plainly satisfied.

[103] The dispute is not rendered non-justiciable merely because the factual matrix arises within a traditional governance environment. The

Constitution remains supreme, and all institutions—whether operating within statutory, administrative or customary spheres—are bound by its commands and limitations. Once it is alleged that a constitutional body has acted outside the powers conferred upon it, the matter engages this Court's original jurisdiction under Article 128 of the Constitution. This directly undermines the majority's conclusion that:

> **[79] In the light of Articles 1(5) and 128(1)(a) and (b) of the Constitution which confine our jurisdiction to matters that relate to the Constitution, this dispute on the dethronement of the 5th respondent based on the culture, customs and traditions of the Lungu people, is consequently outside the jurisdiction of this Court. In accordance with our holding in the case of Bric Back[6], the requisite jurisdiction lies with a court of competent general jurisdiction. Should a constitutional question arise in such a court, it would then be referred to this Court in line with Article 128(2) of the Constitution.** (See page J24) (The underlining is mine)

Articles 1(5) and 128(a) and (b) do not restrict this Court's jurisdiction; they define it. They require this Court to assume jurisdiction whenever a constitutional actor is alleged to have violated the Constitution.

[104] Nor does **Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick** (supra) buttress the majority's position. That decision merely affirms that matters resolvable without recourse to constitutional interpretation fall within the remit of courts of general jurisdiction. It does not stand for the proposition that disputes alleging constitutional excess or contravention by a constitutional body must

first be commenced in those courts. Once a petitioner alleges that a constitutional institution has acted *ultra vires* the Constitution, the dispute ceases to be "general" and becomes quintessentially constitutional. In such circumstances, Article 128(2) of the Constitution does not apply. It is a procedural conduit for the referral of incidental constitutional questions arising in proceedings already before another court, and not a vehicle for disputes whose very basis is alleged constitutional non-compliance.

[105] Unlike the majority, I would hold that the petition properly invokes this Court's original jurisdiction under Article 128(1) of the Constitution. Having reached that conclusion, and the majority having determined otherwise, it is neither necessary nor appropriate for me to express any view on the substantive merits of the petition. My dissent is therefore confined to the question of jurisdiction. For those reasons, and with deference, I am unable to concur in the order dismissing the petition for want of jurisdiction. I concur, however, in the order that each party shall bear its own costs.

M.Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE