



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

2024/CCZ/0020

IN THE MATTER OF: THE DECISION OF THE ANTI-CORRUPTION COMMISSION TO PLACE A WARRANT OF SEIZURE ON THE PETITIONER'S BANK ACCOUNT TWO DAYS BEFORE THE EXPIRY OF THE LIFESPAN OF THE RESTRICTION NOTICE

IN THE MATTER OF: THE DECISION OF THE ANTI-CORRUPTION COMMISSION NOT TO SERVE THE FRESH RESTRICTION NOTICE ON THE PETITIONER FOLLOWING THE LAPSE OF ITS 9 MONTHS LIFESPAN

IN THE MATTER OF: THE FAILURE BY THE ANTI-CORRUPTION COMMISSION TO CONCLUDE ITS INQUIRY WITHIN A REASONABLE TIME WITH ZAMBIA REVENUE AUTHORITY AS TO WHETHER THE TRANSACTION BETWEEN BISMA INVESTMENT LIMITED AND PRIDEGEMS LIMITED, A TRANSACTION OUT OF WHICH THE PETITIONER RECEIVED FUNDS IN HIS CAPACITY AS SHAREHOLDER AND DIRECTOR, WHICH FUNDS ARE NOW SUBJECT OF THE WARRANT OF SEIZURE BY THE RESPONDENT

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLES 173(a)(c)(e)(g)(h) AND 216 (a)(c)(e) OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLES 128(1)(b), 128(3)(b) AND 128(3)(c) OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLES 216 (a) (b) (c) (e), 267 (1) AND (4) OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

BETWEEN:

GODFREY SHAMANENA

PETITIONER

AND

ANTI-CORRUPTION COMMISSION

RESPONDENT

Coram: Munalula PC, Shilimi DPC and Chisunka, JC on 6th December, 2024 and 6th February, 2025

For the Petitioner:

Mr. J. Kayula of Messrs Lewis Nathan Advocates

For the Respondent: *Mr. K. Lukama, In-house Counsel, Anti-Corruption Commission*

RULING

Munalula, PC delivered the Ruling of the Court

Cases referred to:

1. Gervas Chansa v Attorney General 2019/CCZ/004
2. Ikelenge Town Council v National Pension Scheme Authority and Attorney General 2022/CCZ/002
3. Martin Chilukwa v The Attorney General 2022/CCZ/0030
4. Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick 2020/CCZ/A002
5. Isaac Mwanza v The Attorney General 2018/CCZ/008
6. Christopher Shakafuswa and Isaac Mwanza v Attorney General 2018/CCZ/008
7. Lloyd Chembo v The Attorney General Selected Judgment No. 15 of 2018
8. Charles Chihinga v New Future Financial Company 2020/CCZ/003

Legislation referred to:

The Constitution of Zambia as amended by the Constitution (Amendment) Act No. 2 of 2016
The Constitutional Court Act No. 8 of 2016
The Constitutional Court Rules, Statutory Instrument Number 37 of 2016

Works referred to:

Technical Committee on Drafting the Zambian Constitution (TCDZC) Final Report, 2013
Black's Law Dictionary, Eighth Edition

[1] This is a Ruling on a question relating to the Court's jurisdiction *in casu*.

The question was posed by the Court at a scheduling conference convened on 27th November, 2024 pursuant to Order 9 Rule 16 of the Constitutional Court Rules Statutory Instrument Number 37 of 2016 (the Rules).

[2] This followed the filing of a Petition on 12th November, 2024 in the Constitutional Court by the Petitioner. The Court asked the parties to address it on whether there was a constitutional question before it. The

parties were directed to file written submissions addressing the question and augment with oral submissions at a hearing on 6th December, 2024.

[3] The Petitioner presented his submissions on the question in two limbs. Under the first limb, he defined a constitutional question in accordance with the decision of this Court in the case of **Gervas Chansa v Attorney General**¹ where it was held that:

Our short answer to the Petitioner's claim, in essence, is that it is not a constitutional matter so as to be determined by this Court. We say so because of our specific jurisdiction as a court. We are confined to determining constitutional questions. A constitutional question is defined in Black's Law Dictionary as a legal issue resolvable by the interpretation of the Constitution rather than a statute.

[4] Armed with this authority, Counsel for the Petitioner submitted that a constitutional question was one that could be resolved by this Court by interpretation of the Constitution as opposed to a statute. That the same position was pronounced in the case of **Ikelenge Town Council v National Pension Scheme Authority and Attorney General**².

[5] In the second limb, the Petitioner went on to demonstrate how the Petition has met the standard and submitted that at the heart of the Petition is the alleged contravention of Articles 173 (1) (a)(c)(e)(g) and (h) and 216 (a)(c) and (e) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 by the

Respondent. That the said actions that form the basis of the alleged contravention are as follows:

- a. The decision of the Respondent to place a warrant of seizure on the Petitioner's Bank Account two days before the restriction notice could expire to further prolong investigations;
- b. The failure by the Respondent to serve the Petitioner a fresh restriction notice after the expiry of the initial restriction notice;
- c. The failure by the Respondent to conclude its investigations with Zambia Revenue Authority from 8th September, 2022 to date as regard the payment of taxes on transaction that yielded funds that are now subject to the seizure by the Respondent.

[6] It was argued that the Court cannot answer the question of whether the Respondent has contravened identified clauses of Articles 173 and 216 of the Constitution without interpreting the Constitution.

[7] To reinforce the said argument, Counsel for the Petitioner referred to the Final Draft Report of the Technical Committee on Drafting the Zambian Constitution (TCDZC) which states at page 623 that:

The rationale for the Article was to provide for values and principles to guide the conduct of holders of public offices as they were entrusted with enormous decision making and discretionary powers which, if left unchecked, could erode principles of transparency and accountability which were cardinal to good governance. The Committee observed that public officials made a wide range of decisions pertaining to constitutional, statutory, administrative, financial, operational and other matters that have a direct bearing on the nation and citizens. Therefore, it was necessary for the conduct of such officers to be guided by a set of values and principles in the Constitution.

[8] That this clearly shows that the rationale behind the enactment of Articles 173 and 216 of the Constitution was to embed a culture of

transparency, accountability and good governance aimed at deterring abuse, arbitrariness, unfairness, injustice and excesses in the exercise of statutory powers by holders of public offices. That as guardian of the Constitution, this Court has a duty to arrest and thwart any actions that are contrary to the established principles.

[9] Further reliance was placed on the case of **Martin Chilukwa v The Attorney General**³, in which this Court stated that:

We agree that these guiding values and principles of the public service as espoused in Article 173 must be followed by those charged with the responsibilities to do so.

[10] That on the face of it, the petition requires this Court to also determine whether specific clauses of Article 173 and 216 of the Constitution have been complied with by the Respondent in the manner that it executed its investigative functions. That this Court was therefore called upon to interpret the said clauses of Articles 173 and 216 of the Constitution as it did in the **Martin Chilukwa v The Attorney General**³ case in light of the allegations made by the Petitioner against the Respondent.

[11] By way of concluding, the Petitioner urged this Court to proceed to hear the petition on its merit and determine the fundamental issues that had been raised.

[12] In response, the Respondent submitted that based on Articles 1(5) and 128(3)(b) and (c) of the Constitution, this Court's jurisdiction was

limited and reference was made to the case of **Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick**⁴ in which we stated that:

The Constitutional Court of Zambia is a specialized Court set up to resolve only constitutional questions. In that sense, it is separate from the general court hierarchy under which matters move from the lower courts up to the final court of appeal. This Court exemplifies what the learned author Andrew Harding in the Fundamentals of Constitutional Courts calls a centralised system as opposed to a diffused system. In the latter, a supreme court has general jurisdiction over civil and criminal matters as well as constitutional issues. In our case, the Constitutional Court exists only for constitutional matters hence it is separate and additional to the Supreme Court which has general jurisdiction. In the Zambian court system, all questions of general nature, including procedural questions, must proceed through the courts of general jurisdiction.

[13] It was submitted that from the holding in the case of **Gervas Chansa v The Attorney General**¹, this Court only has jurisdiction to try constitutional questions that must invite this Court to interpret the Constitution. That even though the Petitioner alleges a violation of specific clauses of Articles 173 and 216 of the Constitution, a careful perusal of the petition reveals that there is no constitutional question that has been framed for this Court's determination.

[14] By way of illustration, reference was made to an Order for certiorari sought by the Petitioner to remove into this Court the decision of the Respondent to place a Warrant of Seizure on the Petitioner's Bank Account for purposes of quashing it for being ultra vires Articles 173 (1) (a)(c)(e)(g)(h) and 216 (a)(c) and (e) of the Constitution. That the relief

sought is fit for judicial review and this Court is denied power to award such reliefs. That this was the position reflected by this Court's holding in the **Bric Back Limited T/A Gamamwe Ranches v Neil Kirkpatrick**⁴ case.

[15] The Respondent went on to address the Petitioner's resort to section 8(3)(b) and(c) of the Constitutional Court Act No. 8 of 2016 which enjoins the Court to redress such violations by granting the remedies specified in Order XV of the Constitutional Court Rules. That the Petitioner has not pointed to any specific Rule of Order XV which this Court should interpret *vis-a-vis* granting the remedies in relation to the violation of the provisions of the Constitution. The Respondent also cited the **Ikelenge Town Council v National Pension Scheme Authority and Attorney General**² case where we also stated that:

An applicant who approaches this Court for constitutional interpretation must formulate the constitutional question in such a manner that they specify clearly the provisions which the Applicant seeks the Court's interpretation.

[16] It was submitted that the manner in which the reliefs have been framed does not reveal any constitutional issue for determination rendering the reliefs beyond the Court's jurisdiction.

[17] As regards the question of amenability of the Respondent to the oversight role of this Court in the exercise of its functions, it was submitted

that this is beyond the jurisdiction of this Court and did not fall into the category of constitutional questions as earlier illustrated.

[18] The Respondent also submitted that the interpretation of Article 173 of the Constitution further required a factual basis as guided by this Court in the case of **Isaac Mwanza v The Attorney General**⁵ where we held that:

As we have already shown our interpretation of the provisions of the Constitution requires a factual basis. Nevertheless, that factual basis should not point to a conceivable cause of action and the need for concrete interpretation by way of constitutional complaint or even constitutional reference. In the circumstances, the scant facts which have been laid before Court to support interpretation of Article 173 relating to question 4 and Article 174 relating to questions 5 and 6 show that the need for interpretation was triggered by various appointments and disappointments attributed to the incumbent President.

[19] That this Court in the case of **Christopher Shakafuswa and Isaac Mwanza v Attorney General**⁶ also established the principle that interpretation requires an existing factual context when it refused to consider speculative issues and stated as follows:

It is evident from the originating summons that the second to fourth questions raised by the Applicant are of a general nature regarding interpretation and founded upon the constitutional provisions we now intend to consider.

...

An examination of constitutional provisions intended to provide clarity on the meaning of such provisions, thereby serving to guide the efficient and legitimate enforcement of the said provisions.

[20] After giving a synopsis of the allegations put forward in the petition, the Respondent submitted that the same did not reveal any constitutional

questions fit for this Court's determination or interpretation. It was the Respondent's prayer therefore that the petition be dismissed with costs.

[21] At the hearing to establish whether there was a constitutional question on 6th December, 2024, both Counsel for the Petitioner and the Respondent briefly augmented their written submissions. We note that the oral submissions merely repeated what is already on record. To avoid being repetitive, the same will not be recited save to state that we have given due consideration to all the submissions both written and oral.

[22] The Petitioner has argued that we have jurisdiction as the petition has raised a constitutional question fit for this Court's determination by alleging that the Respondent contravened Articles 173 (1) (a)(c)(e)(g)(h) and 216(a)(c) and (e) of the Constitution. He went to great lengths to demonstrate how the said provisions have allegedly been contravened in order to establish a constitutional question but did not refer to any other constitutional provision relied upon. The Respondent on the other hand argued that we have no jurisdiction as the petition is devoid of a constitutional question hence it does not warrant consideration on the merits by the Court.

[23] We are grateful for the detailed arguments given by both sides in response to the question posed by the Court. We have carefully considered the two positions.

[24] Even though there is no dispute as to the need for a constitutional question in order to invoke this Court's jurisdiction, it is apparent that there is disagreement as to what constitutes a constitutional question. There is a lack of clarity as to whether a constitutional question can arise without citing any constitutional provision other than the constitutional values and principles enshrined in a specific 'Part' of the Constitution.

[25] In his petition, the Petitioner alleges contraventions of selected clauses of Articles 173 and 216 through the actions of the Respondent in restricting his access to his bank account. Without going into the merits of the petition or the two impugned Articles, it is apparent that the alleged contraventions are tied to subsidiary law and there is no provision mentioned in the Constitution that covers the issues.

[26] We have considered the question of whether or not we have the jurisdiction to hear the petition; whether or not there is a constitutional question fit for this Court's consideration.

[27] We wish to begin by re-stating our jurisdiction as a court. As rightly argued by the parties, the Constitutional Court exercises specialised jurisdiction which is limited to constitutional matters. We interpret the provisions of the Constitution or determine contraventions of the Constitution depending upon the mode by which our jurisdiction is invoked.

[28] Our jurisdiction flows from Article 1(5) as read with Article 128 (1) (a) and (b), (2) and (3) of the Constitution which provide that:

1(5) A matter relating to this Constitution shall be heard by the Constitutional Court.

...

128(1) 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;

...

(2) Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

(3) Subject to Article 28, a person who alleges that-

(a) an Act of Parliament or statutory instrument;

(b) an action, measure or decision taken under law; or

(c) an act, omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.

[29] The Petitioner has specifically invoked Article 128 (1) (b) read with 128 (3) (c) to allege contravention of Articles 173 and 216, located in the Constitution's Part XIII on the 'Public Service' and Part XVIII on 'Services, Commissions and other Independent Offices', respectively. Relevant portions of Article 173 read:

173. (1) The guiding values and principles of the public service include the following-

(a) maintenance and promotion of the highest standards of professional ethics and integrity;

(c) effective, impartial, fair and equitable provision of public services;

(e) prompt, efficient and timely response to people's needs;

(g) accountability for administrative acts;

(h) proactively providing the public with timely, accessible and accurate information;

...

[30] Whereas cited portions of Article 216 read:

216. A commission shall-

(a) be subject only to this Constitution and the law;

(c) act with dignity, professionalism, propriety and integrity; (d) be non-partisan; and

(e) be impartial in the exercise of its authority.

[31] The marginal note to Article 173 of the Constitution shows that this provision sets out the values and principles of public service whereas Article 216 of the Constitution provides for principles relating to commissions. The provisions are clearly general in nature. Does reference to them alone found a constitutional question to trigger our jurisdiction? To answer the question, it is important to establish the meaning of 'values' and 'principles' and ascertain their place in the Constitution and constitutional order.

[32] The Constitution does not define values or principles. **Black's Law Dictionary Eighth Edition** defines value, particularly social value as the desirability, significance or utility of something to the general public. It defines a principle on the other hand as a basic rule, law or doctrine.

[33] Read together therefore, the values and principles stipulated in the Constitution capture our shared fundamental moral standards and aspirations as a People. The role played by the national values and

principles which are provided for in Article 8 is spelt out in Article 9. Their role is to inform interpretation of the Constitution and the law, enactment of the law and development of state policy.

[34] It is trite that the constitutional values and principles are mandatory. They enable adjudicators to act in accordance with a set of common values and principles already set by the People so that they can come to a decision which is right in the eyes of the People. Thus, it is not left to individual judges or even collegial courts to identify and apply personal or other values other than those specified in the Constitution. The constitutionalised values and principles also ensure that gaps in the law are minimised.

[35] This is so, not just in relation to the general values and principles applicable to the Constitution as a whole as per Articles 8, 9 and 267, but also the values and principles applicable to specific Parts of the Constitution. The specific values and principles falling under each Part of the Constitution are tailored to the peculiarities of that Part but are otherwise a reflection of and derived from the same standards and aspirations that the People have made their own. They thus apply in the same way, as the lens through which the rest of the Constitution is seen.

[36] The import of this in relation to our jurisdiction is profound. The wording of Article 9 is explicit. It provides that the national values and

principles shall apply (a) to the interpretation of this Constitution and (b) to the enactment and interpretation of the law. It is trite that whilst interpretation of the Constitution is the preserve of this Court, interpretation of the law is the preserve of the general or ordinary courts. Adjudicators must interpret the law in the light of the values and principles in the Constitution.

[37] In other words, as all courts are bound by the Constitution to recognise and apply the Constitution in their interpretation of legislation and other laws, the application of values and principles takes place in all courts and not just the Constitutional Court. It follows that, since all courts have the jurisdiction to apply the said values and principles in the same way in which we do, through the application of other provisions of the Constitution that might arise in matters before them, a litigant does not have to find and raise a constitutional question in order to benefit from an interpretation of the law that is informed by the said values and principles.

[38] Having noted that the values and principles apply to actions taken by public officers or institutions, that they relate to myriad facets of public service, we do not find it possible that the framers of the Constitution intended that they should be used as the sole basis for establishing jurisdiction in claims of contraventions of the Constitution. Such a course would in our considered view turn every public act into a constitutional

matter and render redundant the rest of the courts and the law. Principles and not rules would be litigated contrary to the setup of the Judiciary in the Constitution.

[39] It is helpful to keep in mind that a constitutional question flows from constitutional law. That is the law that this Court is mandated to deal with. We say so alive to the fact that certain provisions in the Constitution 'naturally' fall outside of constitutional law or even public law, and it is only their mention in the Constitution that has allotted jurisdiction to this Court.

[40] Even then, this Court has been clear that the first port of call should not be this Court or the principle in the Constitution and that issues should be resolved in the applicable courts using the applicable rules of law. That it is only where these are exhausted that it becomes necessary to invoke the constitutional principle.

[41] In the case of **Lloyd Chembo v The Attorney General**⁷ we stated that if a matter can be resolved using the relevant laws or legislation that is the route which should be taken as a constitutional question has not yet arisen or ripened. We also said:

Much as we hear the Petitioner's plea, we must point out that this Court does not operate in a vacuum. There is comity between the courts constituting the Judiciary. This court works hand in hand with other courts so that matters before it and before other courts are heard and determined in an orderly and efficient manner...this Court ... deals with direct violations of the Constitution... The rest of the law is adequately handled by other courts.

[42] We are of the firm view that constitutional values and principles are applicable and enforceable only in the manner specified by the Constitution and elucidated above. This is what we held in the case of **Charles Chihinga v New Future Financial Company**⁸, and reiterated in **Martin Chilukwa v The Attorney General**³ when we said as follows:

It is therefore our considered view that when a matter is brought before us for determination, we are obligated to take in to account the national values and principles when interpreting the Constitution. The national values and principles by themselves are not justiciable. A litigant that comes to this Court must cite a provision of the Constitution that needs interpretation or which has allegedly been breached. It is only during the interpretation process that the Court is called upon to do so in such manner that will promote the Constitution's purposes, values and principles.

[43] Based on the foregoing our conclusion on the issue that we tasked the parties to address us on is that where there is no constitutional question that a petition is based on then there is no contravention of the Constitution fit for the consideration of this Court.

[44] The issues raised by the Petitioner have no tangible nexus with constitutional law principles, outside of the Bill of Rights, where our mandate lies. They speak to a remedy that this Court cannot deliver as the determination of the allegations would necessitate delving into legislation that has nothing to do with the Court's specialisation. We

therefore find that the Petitioner has failed to show that there is a viable constitutional question before Court. We dismiss the petition for lack of jurisdiction.

[45] Each party to bear their own costs.



M. MUNALULA (JSD)
CONSTITUTIONAL COURT PRESIDENT



A.M.SHILIMI
CONSTITUTIONAL COURT DEPUTY PRESIDENT



M.K.CHISUNKA
CONSTITUTIONAL COURT JUDGE