

IN THE CONSTITUTIONAL COURT OF ZAMBIA

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)

2020/CCZ/007

IN THE MATTER OF:

ARTICLE 1(5) AS READ WITH ARTICLE 128(1), (3) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA. THE JURISDICTION OF THE CONSTITUTIONAL COURT.

IN THE MATTER OF:

ARTICLE 11(2), (3) AND (4) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA. THE SUPREMACY OF THE CONSTITUTION, ITS CONTRAVENTION IS ILLEGAL AND THAT ALL PERSONS IN ZAMBIA, STATE ORGANS AND STATE INSTITUTIONS ARE BOUND BY IT.

IN THE MATTER OF:

ARTICLE 2 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA. THE RIGHT AND DUTY TO DEFEND THE CONSTITUTION FROM OVERTHROWN, SUSPENDED OR ILLEGALLY ABROGATED.

IN THE MATTER OF:

ARTICLE 3 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA. THE CONSTITUTION SHALL NOT BE AFFECTED BY AN UNLAWFUL ACT TO OVERTHROW, SUSPEND OR ILLEGALLY ABROGATE ITS PROVISIONS.

IN THE MATTER OF:

ARTICLE 60(2)(d) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA. A PARTY MUST PROMOTE AND PRACTICE DEMOCRACY THROUGH REGULAR, FREE AND FAIR ELECTIONS WITHIN THE PARTY.

IN THE MATTER OF:

SECTION 18 OF THE CONSTITUTION OF ZAMBIA ACT NO.1 OF 2016 OF THE LAWS OF ZAMBIA. A POLITICAL PARTY WHICH WAS IN EXISTENCE BY 5TH JANUARY, 2016 WAS TO INTER ALIA CONDUCT A FREE AND FAIR ELECTION WITHIN THE PARTY AND ANY POLITICAL PARTY WHICH DID NOT CONDUCT A FREE AND FAIR ELECTION WITHIN THE PARTY WITHIN 12 MONTHS FROM 5TH JANUARY 2016 CEASED TO EXIST AS A POLITICAL PARTY.

IN THE MATTER OF:

ALLEGED CONTRAVENTION OF ARTICLE 60 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA AND SECTION 18 OF THE CONSTITUTION OF ZAMBIA ACT NO.1 OF 2016 OF THE LAWS OF ZAMBIA.

BETWEEN:

BENJAMIN MWELWA

PETITIONER

AND

THE ATTORNEY GENERAL

1st RESPONDENT

THE ELECTORAL COMMISSION OF ZAMBIA

2nd RESPONDENT

STEVEN KATUKA (in his capacity as Secretary

General of The United Party for National

Development)

1st INTERESTED PARTY

DAVIES MWILA (in his capacity as Secretary

General of The Patriotic Front)

2nd INTERESTED PARTY

ELIZABETH KATONGO CHITIKA (in her capacity

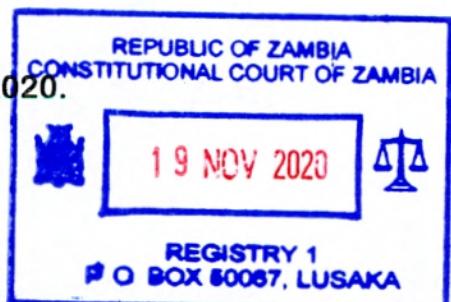
as National Secretary for The Movement for

Multiparty Democracy)

3rd INTERESTED PARTY

Coram: Sitali, Mulembe and Munalula, JJC

On 19th August, 2020 and 19th November, 2020.



For the Petitioner: In Person

For the 1st Respondent: No appearance

For the 2nd Respondent: Mr. M. Bwalya, Legal Officer

For the 1st Interested Party: Mr. M. H. Haimbe and Mr. K. Phiri of Messrs Malambo & Company

For the 2nd Interested Party: Mr. P. Shambulo of Messrs Ngonga Yalela & Associates

For the 3rd Interested Party: Ms. S. Kalima of Messrs J&M Advocates

RULING

Mulembe, JC delivered the Ruling of the Court.

Cases referred to:

1. **Lloyd Chembo v The Attorney General and Others** 2017/CCZ/0011
Selected Judgment No. 15 of 2018
2. **Benjamin Mwelwa v Attorney General** 2017/CCZ/0010
3. **Besa Mutale v Attorney General** 2019/CCZ/0010
4. **Kafamuyeke Mukelabai v Esther Nalwamba, Commissioner of Lands and The Attorney General** (2013) Vol. 2 Z.R. 312
5. **Gervas Chansa v Attorney General** 2019/CCZ/004
6. **Nahar Investments Limited v Grindlays Bank International (Z) Limited** (1984) Z.R 81
7. **Richard Mumba v Gary Nkombo and 43 Others** 2017/CCZ/005
8. **GTB v Toyed (Nig) Ltd & Another** (2016) JELR 34533 (CA)
9. **Shell Petroleum Development Company Nigeria Ltd v Isaiah** (2001) LPELR-SC 75
10. **Chagi and Others v Special Investigating Unit** 2009 (2) SA 1 (CC)
11. **Coke v Gill¹¹** (1873) 8 CP 107

Legislation referred to:

1. **The Constitution of Zambia Act No. 1 of 2016**
2. **The Constitution of Zambia Chapter 1 of the Laws of Zambia**
3. **The Constitutional Court Act No. 8 of 2016**
4. **The Constitutional Court Rules S.I No. 37 of 2016**

Other works referred to:

1. **The Supreme Court Practice 1999 (White Book)**
2. **Black's Law Dictionary, Deluxe Tenth Edition, Thomson Reuters**

This is the 1st Interested Party's summons to strike out the petition and to dismiss the action. The application is made pursuant to Article 128(1) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (hereinafter "the Constitution"), section 8(1) of the Constitutional Court Act No. 8 of 2016 (hereinafter "the Act"), Order I rules 1 and 2 of the Constitutional Court Rules S.I No. 37

of 2016 (hereinafter “the Court’s Rules”) as read with Order 18 rule 19 of the Rules of the Supreme Court of England 1999 Edition (hereinafter “the White Book”) and the inherent jurisdiction of the Court. The application is supported by an affidavit.

The 1st Interested Party anchors its application on the following grounds, and we quote:

- (i) The Petition is not properly before this Court by reason of want of jurisdiction having regard to the provisions of Article 128(1) of the Constitution of Zambia (sic) Act No. 2 of 2016 and Section 8(1) of the Constitutional Court Act No. 8 of 2016, as Section 18 of the Constitutional of Zambia Act No. 1 of 2016 is an Act of Parliament and therefore, not within the jurisdiction of this Honourable Court.
- (ii) Further and/or in the alternative, in terms of Order 18 rule 19 of the Rules of the Supreme Court 1999 Edition (“RSC”), that the Petition be struck out and the action dismissed on the ground that the Petition and the affidavit verifying facts do not disclose any cause of action against the Respondents capable of being sustained in this Honourable Court and that the Petition is frivolous, vexatious and otherwise an abuse of the process of this Honourable Court.
- (iii) And that the costs of and incidental to this application be borne by the Petitioner in any event.

In the affidavit in support of the application deposed to by Steven Katuka, the 1st Interested Party in this matter, it was averred that, upon perusal of the petition and its supporting affidavit, it had become apparent to the 1st Interested Party that the same do not meet the requirements for actions that ought to be brought before this Court. That the petition was founded on

an Act of Parliament and, in light of that, the petition is wrongly before this Court for want of jurisdiction; that it ought to have been brought before the High Court of Zambia. Further, that neither the petition nor the affidavit verifying facts disclose any alleged violation of the Constitution on the part of the Respondents or any political party as alleged.

In his written submissions, the 1st Interested Party began by citing the law relating to the jurisdiction of this Court as provided in Article 128(1) of the Constitution and section 8(1) of the Act. It was argued that in order for a party to competently approach this Court for relief in the exercise of its original jurisdiction, such a party must set out the violations of the Constitution that are alleged to have been committed and how the said violations were committed or the provisions that require interpretation. That failing that, there could be no basis upon which this Court could be moved to pronounce remedies in favour of a party.

It was the 1st Interested Party's further submission that as was clear from the petition and supporting affidavit, the action did not disclose any violation of the Constitution or any provisions of the Constitution that require interpretation and was, therefore, incompetently before this Court. That if this Court found that the

Petition disclosed no cause of action or that it is frivolous, vexatious and an abuse of the process of this Court or not sustainable upon determination of the questions raised by this application, then the petition should be struck out and the action dismissed.

Addressing the first ground, that the petition is improperly before this Court for want of jurisdiction, the 1st Interested Party submitted that a perusal of the petition revealed that the Petitioner alleged that the "Respondents and all political parties had" contravened the Constitution by breaching section 18 of the Constitution of Zambia Act No. 1 of 2016 (hereinafter "Act No. 1 of 2016"). According to the 1st Interested Party, the Petitioner requires this Court to interpret an Act of Parliament, the interpretation of which falls outside the jurisdiction of this Court. Also, that the validity of the allegation that all political parties were non-existent hinged on section 18 of Act No. 1 of 2016. It was contended that the jurisdiction aspect of this matter affected the entire petition which question can only be determined by the High Court and that the action must fail of its own inanition, citing the case of **Lloyd Chembo v The Attorney General and Others¹** for authority.

On the second ground, that the petition discloses no cause of action, is frivolous, vexatious and an abuse of process, it was the 1st Interested Party's contention that the petition is devoid of particulars as to which provisions of the Constitution were violated and how they were allegedly violated. That a reading of the affidavit verifying facts disclosed that the entire petition was premised on alleged violations of subsidiary legislation and not upon any alleged violations of the Constitution.

The 1st Interested Party submitted that the allegations set out in the petition and its supporting affidavit disclosed no cause of action capable of being sustained in this Court as the same did not disclose any constitutional issues for the Court's determination in terms of Article 128(1) of the Constitution. Further, that it was an abuse of process for the Petitioner to ask that an Act of Parliament be interpreted by this Court when the Constitution clearly spelled out the jurisdiction of this Court. That given the provisions of Article 128(1) aforesaid, the petition ought to be struck out and dismissed as it is frivolous, vexatious and an abuse of the process of this Court.

In his oral submissions, Mr. Haimbe, learned Counsel for the 1st Interested Party, focused on the issues raised by the Petitioner

in his response to the application. Mr. Haimbe submitted that the motion was properly before the Court when regard is given to the clear provisions of Order 18 rule 19 of the White Book. He contended that the Petitioner seemed to erroneously suggest that the only way in which a party could approach the Court to seek determination of matters *in-limine* is by way of adopting the procedure in Order 14A of the White Book and that the Petitioner's argument was misconceived and that the authorities relied on were out of context.

Mr. Haimbe submitted that the procedure in Order 14A is separate and distinct from that which is in Order 18 which has been relied on. He contended that the Petitioner had not cited any authority that ousts the jurisdiction of this Court to entertain an application brought under Order 18 of the White Book.

On whether this Court can entertain a preliminary application of this nature prior to filing of intention to defend, Mr. Haimbe submitted that that was a misapprehension of the law as contained in Order 18 rule 19(3) of the White Book, which reads:

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Counsel argued that the procedure under Order 18 rule 19(3) was clear and that it could be invoked at any stage, promptly and before defence is made. Mr. Haimbe submitted that it was noteworthy that Order 18 rule 19 applies to a petition as well. It was his further submission that, in this case, the applicant had complied with Order 18 rule 19(3) as the application had been made promptly. That the essence of Order 18 rule 19 is to allow the applicant not to be embarrassed in his defence by allowing for the application to be made prior to such events, so that irregularity, if any, is addressed.

Mr. Haimbe contended that the Petitioner's objection, which is entirely premised on Order 14A of the White Book, was misconceived and ought to be disregarded. He submitted that the substance of the 1st Interested Party's application is that this Court lacks jurisdiction to entertain or determine the substantive issues in the petition. That this Court has inherent jurisdiction to determine whether or not a matter is properly before it, even of its own motion.

Learned Counsel proceeded to submit that as the petition in the instant case was anchored on an Act of Parliament rather than the Constitution, it falls outside of matters that this Court has

jurisdiction to hear. We were invited to consider the contents of the petition, particularly paragraphs 7 to 17. Mr. Haimbe argued that the petition contained general allegations that lacked particularity on specific provisions alleged to have been breached. Further, and based on the Petitioner's interpretation of section 18 of Act No. 1 of 2016, that the entire petition was anchored on the allegation that as of 4th January, 2017 all political parties in Zambia ceased to exist.

It was Mr. Haimbe's further contention that even the reliefs being sought under subparagraphs (i) to (v) of paragraph 17 were all premised on the same erroneous allegation anchored on Act No. 1 of 2016. He wound up his submission by reiterating that in terms of Order 18 rule 19 of the White Book, the petition was not properly before the Court.

Mr. Bwalya, for the 2nd Respondent, adopted the 1st Interested Party's arguments. Mr. Shambulo and Ms. Kalima, for the 2nd and 3rd Interested Parties, respectively, did not object to the 1st Interested Party's application.

The Petitioner filed his Affidavit in Opposition to the 1st Interested Party's application to strike out the petition and dismiss

the action on 12th June, 2020, accompanied by lengthy skeleton arguments.

The Petitioner averred that contrary to the 1st Interested Party's assertions, the petition met all the requirements for actions brought before this Court as it was premised on contravention of the Constitution. That the petition was properly and rightly before this Court and disclosed in great detail alleged violation of the Constitution by all the political parties in Zambia.

Responding to the 1st Interested Party's first ground, that the Petition was not properly before this Court for want of jurisdiction in terms of Article 128(1) of the Constitution and section 8(1) of the Act, the Petitioner called in aid the cases of **Benjamin Mwelwa v Attorney General**² and **Besa Mutale v Attorney General**³ to support the point that the instant application was improperly before the Court as this Court has jurisdiction in the matter.

It was submitted that on the basis of the case of **Benjamin Mwelwa v Attorney General**² aforementioned, the guidance of this Court is that the appropriate provision to raise a preliminary issue is Order 14A rule 1 and Order 33 rule 3 of the White Book as read with Article 128(1)(e) of the Constitution. The Petitioner submitted

that the issue of jurisdiction must be addressed and determined before the hearing of any application can proceed, otherwise the resulting trial or hearing would be a nullity.

It was submitted that after the Court joined the 1st Interested Party to the proceedings, the 1st Interested Party did not file an answer but proceeded to file an application challenging the petition without satisfying Order 14A rule 1 of the White Book; that the 1st Interested Party cannot raise any preliminary issues as they have failed to file intention to defend in the form of an answer and affidavit in opposition within the required 14 days from the time they were served the petition pursuant to Order IV rule 4(1) of the Court's Rules.

Citing the case of **Kafamuyeke Mukelabai v Esther Nalwamba, Commissioner of Lands and The Attorney General**⁴ where it was held, *inter alia*, that giving of notice of intention to defend is a prerequisite to making an application under Order 14A, the Petitioner pressed the point that Order 14A rule 2(3) is clear that an applicant who wishes to raise preliminary issues cannot do so in the absence of a notice of intention to defend, which in this case is in the form of an answer and opposing affidavit.

It was further submitted that the Court's Rules entitle the Petitioner to be heard in the absence of the Respondent where the Respondent has failed to file an answer and affidavit in opposition pursuant to Order IV rule 4(1) which, he argued citing **Gervas Chansa v Attorney General**⁵ for authority, is couched in mandatory terms.

It was the Petitioner's contention that the 1st and 2nd Respondents' 14 days in which to file an answer and affidavit in opposition elapsed on 25th May, 2020; for the 1st Interested Party it elapsed on 11th June, 2020. Further, that the Court should not only dismiss the 1st Interested Party's preliminary issues but should also exclude the Respondents from taking part in the proceedings for not filing their respective answers and affidavits in opposition. That without filing an answer and affidavit in opposition, the Respondents have no defence at all and that the Court should dismiss the 1st Interested Party's preliminary issues and proceed to hear the petition in the absence of the Respondents.

And citing the case of **Nahar Investments Limited v Grindlays Bank International (Z) Limited**,⁶ the Petitioner submitted that the Respondents had not made any timely application to enlarge time

in which to file an answer and affidavit in opposition. The Petitioner reiterated the point that Order IX rule 17(1) of the Court's Rules mandates this Court to hear and determine the petition in the absence of the Respondents.

The Petitioner also submitted that, contrary to the 1st Interested Party's assertion, the petition discloses the cause of action quite precisely and that it is the 1st Interested Party's application which is frivolous and vexatious in both form and content and should be dismissed with costs for failure to comply with the rules of the Court.

And in his oral submissions, the Petitioner, Mr. Mwelwa, maintained that the rules of this Court, particularly Order IV rule 4(4) have to be observed by any respondent with issues *in-limine*.

On the question of lack of jurisdiction, Mr. Mwelwa's contention was that the petition was not asking for interpretation of any provision of law; instead the allegation was that the provisions of the Constitution, particularly Article 60(2)(d), had been breached and referred the Court to Article 128(1)(b) of the Constitution. He reiterated that the 1st Interested Party's application lacked merit and should be dismissed with costs.

In reply, the 1st Interested Party averred that contrary to the Petitioner's assertions, the petition is irregular and defective as it is improperly before this Court. Further, the 1st Interested Party submitted that its application was premised on Order I rules 1 and 2 of the Court's Rules as read with Order 18 rule 19 of the White Book.

It was submitted that the main issue in contention contained in the petition is the alleged failure to hold intraparty elections in all political parties, within twelve months of the passing of the Constitution of Zambia Act No. 1 of 2016 and the Constitution of Zambia (Amendment) Act No. 2 of 2016. That, however, the provision at the core of the Petitioner's argument is section 18 of Act No. 1 of 2016, which is an Act of Parliament, whose interpretation does not fall within the jurisdiction of this Court, citing the case of **Richard Mumba v Gary Nkombo and Others**⁷ for authority.

It was submitted that contrary to the Petitioner's argument, the application was made pursuant to Order 18 rule 19 of the White Book and not Order 14A; thus, the mandatory requirements of Order 14A need not have been satisfied in the present case. Further, that Order 18 rule 19 aforesaid may be cited at any stage

of the proceedings. The 1st Interested Party added that it could not file an answer to defend matters arising from an irregular petition, until this issue has been heard and determined.

Mr. Phiri, augmenting, submitted that the application before the Court is a motion to dismiss the petition and that the Petitioner's argument based on Order IV rule 4 was misconceived and, therefore, ought to be disregarded. He maintained that the petition contained general allegations, mainly making reference to section 18 of Act No. 1 of 2016.

It was the prayer of the 1st Interested Party that this Court dismisses the petition which is based on Act No. 1 of 2016.

We have given due consideration to the application and the affidavits filed by the parties. We have also considered the written and oral arguments and the authorities cited. From our perspective, and as indicated in the grounds advanced by the 1st Interested Party in making this application, there are two issues that fall for our consideration in this application. The first is the question of the jurisdiction of this Court. Specifically, the 1st Interested Party questions whether the petition, being founded on a provision in an Act of Parliament, the Constitution of Zambia Act

No. 1 of 2016, is properly before this Court. The 1st Interested Party questions whether the petition reveals any constitutional matter within the ambit of this Court's jurisdiction as provided in Article 128(1) of the Constitution as amended and section 8 of the Constitutional Court Act.

Secondly, whether this application is properly before this Court in view of the Petitioner's contention that the 1st Interested Party came under the wrong provision in making this application and should have come under Order 14A rule 1 and Order 33 rule 3 of the White Book.

We propose to first deal with the second issue as it impacts on the status of the instant application before this Court. The Petitioner challenged the propriety of the 1st Interested Party's application by asserting that the appropriate provision under which to raise a preliminary issue is Order 14A rule 1 of the White Book. Citing various authorities, the Petitioner contends that the 1st Interested Party cannot raise the instant application without first filing his intention to defend in the form of an answer and affidavit in opposition. The Petitioner stressed that giving notice of intention to defend is a prerequisite to making an application under Order 14A rule 2(3) of the White Book.

In response to the Petitioner's contention that the 1st Interested Party's application had not complied with the mandatory requirements of Order 14A of the White Book in making its application, the 1st Interested Party's position is that the application is premised on Order I rules 1 and 2 of the Court's Rules as read together with Order 18 rule 19 of the White Book and not Order 14A.

We have considered the arguments on this aspect. Order 18 rule 19 of the White Book, pursuant to which the 1st Interested Party makes its application, reads:

19 – (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading. (*emphasis added*)

The import of Order 18 rule 19 above is clear. The rule, *inter alia*, permits a litigant to apply for an order of the court to strike out and dismiss the action on the ground that the matter discloses no cause of action and that it is frivolous, vexatious and an abuse of the process of this Court. Note 18/19/3 of the White Book guides that the application should always be made promptly. This is the rule the 1st Interested Party has invoked.

The Petitioner's response was to venture into a detailed argument that the 1st Interested Party's application is irregular and that the application should have come under Order 14A aforesaid. From the outset, we wish to state that this argument is misplaced because the relief the 1st Interested Party seeks is to have the matter struck out and dismissed for want of jurisdiction. The application has been made promptly and states precisely the grounds upon which it stands; that the petition reveals no cause of action and is frivolous and vexatious.

Our considered view is that the 1st Interested Party, in making this application, has come under the correct provision, to wit, Order 18 rule 19 of the White Book. We find no merit in the Petitioner's argument that the application is improperly before this Court.

We now turn to consider the 1st Interested Party's contention that this Court lacks jurisdiction to hear and determine the issues raised in the petition, which petition is premised on section 18 of the Constitution of Zambia Act No.1 of 2016 and that the interpretation of an Act of Parliament falls outside the jurisdiction of this Court. The 1st Interested Party argues that the petition is improperly before this Court for want of jurisdiction as, for a party to approach this Court, they must lay out the provisions of the Constitution that have been contravened or violated, failure to which there can be no basis upon which this Court can be moved. That the petition and supporting affidavit do not disclose any alleged violation of the Constitution by the Respondents.

The Petitioner countered that the petition is properly before this Court as it discloses in great detail alleged violation of the Constitution by all political parties in Zambia; that the main relief sought in the petition is that the Respondents have violated Article 60(2)(d) of the Constitution.

We have considered the arguments on this aspect. In terms of the jurisdiction of this Court, Article 128(1) of the Constitution states:

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;
- (c) a matter relating to the President, Vice-President or an election of a President;
- (d) appeals relating to election of Members of Parliament and councillors; and
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.

And section 8 of the Constitutional Court Act reads:

8. (1) Subject to Article 28 of the Constitution, the Court in exercise of its original and final jurisdiction may determine-

- (a) a matter relating to the interpretation of the Constitution;
- (b) a matter relating to a violation or contravention of the Constitution;
- (c) a petition to challenge the nomination of a candidate for election as Republican President;
- (d) a matter relating to the Republican President, Vice-President or the election of a Republican President;
- (e) appeals relating to the election of Members of Parliament and councillors;
- (f) an application to review the decision of the Electoral Commission of Zambia in the delimitation of constituencies and wards;
- (g) a matter referred to the Court by the Republican President pursuant to the Constitution; and
- (h) whether or not a matter falls within the jurisdiction of the Court,

Thus, the jurisdiction of this Court is well defined in the Constitution and in the enabling statute. It is elementary that jurisdiction is the basis upon which the judicial power of a court of law is founded. Jurisdiction is what provides the authority for a court to hear and determine matters that come before it in the manner prescribed by law. In the case of **GTB v Toyed (Nig) Ltd & Another**⁸ the Nigerian Court of Appeal stated:

The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any court tries or hears a case. It is, metaphorically speaking, the life blood of all trials, ... and without which all such trials and hearings are a nullity notwithstanding how well or meticulous such a trial or proceeding had been conducted or how sound or profound the resultant judgment. It is simply a nullity.

And in **Shell Petroleum Development Company Nigeria Ltd v Isaiah**⁹ jurisdiction was described as the:

...fulcrum, centrepin, or the main pillar upon which the validity of any decision of any court stands and around which other issues rotate.

Jurisdiction is, thus, preeminent in any judicial proceedings. It is pivotal and fundamental; the authority a court has to hear and decide a legal controversy. That is why where there is an objection to the jurisdiction of a court, the issue must first be resolved by the court before the substantive proceeding is commenced. The 1st Interested Party seeks to have the matter

dismissed for want of jurisdiction on the ground that the Petitioner's petition and its supporting affidavit do not reveal any constitutional matter for the consideration of this Court within the ambit of its jurisdiction as mentioned above.

It is trite that all matters falling within the exclusive jurisdiction of this Court, as given in Article 128(1) of the Constitution as amended and section 8 of the Constitutional Court Act, self-evidently, amount to constitutional matters. Matters that come to this Court must reveal questions relating to the interpretation, protection or enforcement of the Constitution; they should be matters within the anticipation of Article 128(1) of the Constitution as read with section 8 of the Constitutional Court Act No. 8 of 2016. The 1st Interested Party's contention is that the Petitioner is asking this Court to interpret an Act of Parliament by alleging that the Respondents contravened section 18 of the Constitution of Zambia Act No. 1 of 2016, the interpretation of which, the 1st Interested Party asserts, falls outside the jurisdiction of this Court.

We are mindful that the interpretation of legislation is not always a constitutional matter. We are of the view that for interpretation of legislation to fall in the realm of a constitutional

matter, the Constitution must be brought to bear in the interpretive exercise. In the South African case of **Chagi and Others v Special Investigating Unit**¹⁰, Yacoob J succinctly put it thus:

The correct interpretation and effect of a statutory provision is not ordinarily a constitutional matter. A debate on the construction of a particular provision does, however, raise a constitutional issue or a matter connected with a decision on one if the provision is capable of two reasonable constructions, the one being more constitutionally compliant than the other.

The question then is, does the Petitioner's petition raise any constitutional matter deserving the attention of this Court? To answer that question, we find it necessary to look at the contents of the petition. In particular, we have paid attention to the contents of paragraph 17 of the petition at page 6 of the Record of Proceedings. Therein, the reliefs the Petitioner seeks are stated in sub-paragraphs (i) to (vii). One particular detail stands out, and this is that the Petitioner is seeking orders and declarations for the alleged breach of Article 60(2)(d) of the Constitution as amended and also section 18 of the Constitution of Zambia Act No. 1 of 2016 by political parties and that the 2nd Respondent has allowed the political parties which have ceased to exist to participate in the elections conducted since 4th January, 2017.

Article 60(2)(d) of the Constitution and section 18 of Act No.1 of 2016 read as follows:

Article 60(2)(d)

A political party shall –

...
promote and practice democracy through regular, free and fair elections within the party;

Section 18

- (1) **A political party in existence immediately before the effective date shall, within twelve months of the effective date, comply with the Constitution as amended and any legislation enacted by Parliament in accordance with the Constitution as amended.**
- (2) **If on the expiry of the period of twelve months, a political party has not complied with the Constitution as amended and any legislation enacted under subsection (1), the political party shall forthwith cease to exist as a political party. (emphasis added)**

The 1st Interested Party's contention is that the petition is founded on an Act of Parliament over which this Court has no jurisdiction. In regard to this point, we are of the considered view that the Constitution of Zambia Act No. 1 of 2016 is the enabling Act for the Constitution as amended as stated in section 4 that "Subject to this Act, the Constitution as amended in Act No. 2 of 2016 shall come into operation on the commencement of this Act." Hence lies the nexus between the Constitution of Zambia (Amendment) Act No. 2 of 2016 and the Constitution of Zambia Act No. 1 of 2016. The two are conjoined through section 4 aforesaid.

In the reliefs he seeks, the Petitioner refers to section 18 of Act No. 1 of 2016 in subparagraphs (iii), (iv) and (v) of paragraph 17 of the petition as having been breached by the Respondents in conjunction with Article 60(2)(d) of the Constitution as amended. Our considered view is that section 18 of Act No. 1 of 2016 necessarily invokes relevant provisions of the Constitution as amended. That fact brings the interpretation or enforcement of section 18 aforesaid within the ambit of the jurisdiction of this Court.

We find as unmeritorious the 1st Interested Party's argument that section 18 of the Constitution of Zambia Act No.1 of 2016 is not amenable to the jurisdiction of this Court. It is. Section 18 aforesaid refers to compliance with the Constitution as amended for the subject it covers.

Having stated so, the central question that remains is whether a cause of action against the Respondents is conceivable in light of the allegations set out by the Petitioner in his petition. The 1st Interested Party submitted that the petition and its supporting affidavit did not disclose any violation of the Constitution by the Respondents; that it contained general allegations with no specificities. Without elaboration, the

Petitioner countered that the petition disclosed the cause of action quite precisely.

The learned authors of Black's Law Dictionary, Deluxe Tenth Edition, define "*cause of action*" as:

A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.

And in the old case of **Coke v Gill**¹¹ Lord Brett said:

Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. (*emphasis added*)

We have carefully perused the petition and its supporting affidavit. Save for allusion to the 1st Respondent allegedly failing to advise the Registrar of Societies to deregister the political parties and the 2nd Respondent allowing the political parties that, in the Petitioner's view, have ceased to exist to participate in elections, we are unable to decipher, from the petition and supporting affidavit, the material facts constituting or making up the alleged breaches by the 1st and 2nd Respondent vis-à-vis Article 60(2)(d) and section 18 of Act No. 1 of 2016. We hold the firm view that it is not sufficient to allege breach of a statutory or constitutional provision without setting out the facts, in sufficient detail, which

are the basis of the claim against the Respondents and entitle the Petitioner to the reliefs sought.

In view of the foregoing, we come to the conclusion that the petition does not reveal sufficient details to warrant the existence of a cause of action against the 1st and 2nd Respondents or how they (1st and 2nd Respondents) have allegedly breached Article 60(2)(d) of the Constitution and section 18 of Act No.1 of 2016 to justify this Court's intervention.

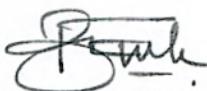
We find merit in the 1st Interested Party's contention that the petition discloses no cause of action against the 1st and 2nd Respondents. The petition is accordingly struck out and dismissed as prayed.

Each party shall bear their own costs.



A. M. Sitali

CONSTITUTIONAL COURT JUDGE



E. Mulembe

CONSTITUTIONAL COURT JUDGE



M. M. Munalula

CONSTITUTIONAL COURT JUDGE