

2021/CC/0025

2021/CC/0027

HOLDEN AT LUSAKA

(Constitutional Jurisdiction)

**IN THE MATTER OF: ARTICLES 1(5), 2, 52(4) AND 128 OF THE
 CONSTITUTION**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF
ARTICLE 106(3) OF THE CONSTITUTION**

**IN THE MATTER OF: THE NOMINATION OF EDGAR CHAGWA
 LUNGU AS CANDIDATE FOR PRESIDENT
 IN THE ELECTION SET FOR 12 AUGUST
 2021**

BETWEEN:

LEGAL RESOURCES FOUNDATION LIMITED 1ST PETITIONER

SISHUWA SISHUWA (Dr) **2ND PETITIONER**

CHAPTER ONE FOUNDATION LIMITED 3RD PETITIONER

AND

EDGAR CHAGWA LUNGU 1ST RESPONDENT

THE ATTORNEY GENERAL **2ND RESPONDENT**

CORAM: Chibomba PC, Sitali, Mulenga, Mulonda, Munalula, Musaluke, Chitabo, Chisunka, Mulongoti JJC on 7th June, 2021 and 11th June, 2021

For the Petitioners:

Mr. J. Sangwa, SC
Simeza Sangwa and Associates

For the 1st Respondent **Mr. B. C. Mutale, SC**
Ellis and Company



**Mr. E. S. Silwamba, SC and Mr. L. Linyama
of Eric Silwamba, Jalasi and Linyama Legal
Practitioners**

**Mr. S. Sikota, SC
Central Chambers**

**Mr. C. K. Bwalya
D. H. Kemp and Company**

**Mr. J. Zimba
Makebi Zulu Advocates**

**Mr. K. Mambwe and Mr. J. Chirwa of Ferd
Jere and Company**

For the 2nd Respondent:

**Mr. L. Kalaluka, SC Attorney General
Mr. A. Mwansa, SC Solicitor General
Mr. F. Imasiku, Deputy Chief State Advocate
Mr. F. Mwale, Principal State Advocate
Mr. S. Mujuda, Principal State Advocate
Mr. C. Mulonda, Principal State Advocate
Mr. P. Phiri, State Advocate**

ABRIDGED JUDGMENT

Sitali JC delivered the majority abridged Judgment of the Court

Cases cited:

- 1. Daniel Pule and Others v. The Attorney General, Selected
Judgment No. of 2018**

Background

[1] This is an abridged majority judgment of the Court which is delivered in view of the very short time limited by the Constitution for the determination of a petition challenging the nomination of a

candidate under Article 52 (4) of the Constitution. A detailed judgment of the Court will be delivered on 30th June, 2021 in line with the requirements of Article 52 (5) that the processes specified in clauses (1) to (4) shall be completed at least thirty days before a general election.

[2] Before us are two consolidated petitions filed on 21st May, 2021. The first petition under cause number 2021/CCZ/0025 was filed by the Legal Resources Foundation against the 1st Respondent Mr. Edgar Chagwa Lungu while the second petition under cause number 2021/CCZ/0027 was filed by Sishuwa Sishuwa and Chapter One Foundation Limited as 1st and 2nd Petitioners respectively against the 1st Respondent. The Attorney-General was subsequently joined to the proceedings as 2nd Respondent on 26th May, 2021. The two petitions were thereafter consolidated.

Reliefs Sought

[3] The Petitioners seek the following reliefs:

- (a) a declaration that the 1st Respondent having been elected, sworn into and held the office of President from 25th January, 2015 to 13th September, 2016 and having

been declared winner of the 2016 election, sworn into
and having held the office of President from 13th
September 2016 until the next President is elected
under the 2021 election is not eligible for nomination for
election as President in the election set for 12th
August, 2021;

- (b) a declaration that to the extent that the 1st Respondent's
nomination for election to the office of President
scheduled for 12th August, 2021 contravenes Article 106
(3) of the Constitution, the said nomination is null and
void; and
- (c) an order (of certiorari) that the nomination paper filed
by the 1st Respondent with the Returning Officer and all
documents in support of the 1st Respondent's
nomination for election to the office of the President in
the election of 12th August, 2021 be removed forthwith
into the Constitutional Court for purposes of quashing.

[4] The two petitions are each supported by an affidavit verifying
facts deponed by John Sangwa.

[5] The 1st and 2nd Respondents filed their respective Answers with supporting affidavits in opposition to the Petitions on 31st May, 2021.

[6] The Respondents also filed Notices of Motion to Raise Preliminary Issues on 31st May, 2021 which we heard together with the Petition. We shall address the issues raised in the Motions in the full Judgment.

Challenge of 1st Respondent's Nomination

[7] The petitions in this matter were filed pursuant to Article 52(4) which reads:

A person may challenge, before a court or tribunal as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty-one days of its lodgment.

[8] The petitions are therefore properly before us. The Petitioners' main contention in challenging the validity of the nomination of the 1st Respondent as a presidential candidate for 12th August, 2021 is that the 1st Respondent having been elected and sworn into office of President on 25th January, 2015 and having held office until 13th September, 2016; and again having been elected and sworn into

office on 13th September, 2016 and having held the said office to date has contravened Article 106(3) of the Constitution by filing his nomination paper and supporting affidavit with the Returning Officer stating that he qualifies for nomination as a presidential candidate for the election scheduled for 12th August, 2021. They contend that Article 106 (3) of the Constitution bars a person who has twice held office as President from contesting an election to the office of President.

[9] The 1st Respondent in opposing the Petitions stated that he had not breached Article 106(3). It was submitted that under the Constitution as amended in 2016, the holding of office of President was attached to the term of office as defined by Article 106(1) and (6). It was further argued that the presidential term of office that ran from 25th January, 2015 to 13th September, 2016 was a subject of determination of this Court in the **Daniel Pule** case where it was held that it could not be considered as a full term in terms of Article 106(3) as read with Article 106(6).

[10] The 2nd Respondent's position was that Article 106(3),(5) and (6) of the Constitution were already determined in the **Daniel Pule**

and **Kapalasa** cases and that these Petitions based on Article 106(3) were therefore seeking to re-litigate the issue regarding the presidential term spanning 25th January, 2015 to 13th September, 2016.

Decision

[11] The holding of office as President referred to in Article 106 (3) is related to the tenure of office stated in Article 106 (1) and (6) of the Constitution. Thus in determining whether the 1st Respondent has twice held office as President as stipulated by Article 106 (3), consideration should be taken of the provisions of Article 106 (1) and (6) which touch on the subject of tenure of office as President.

[12] This is in line with the principle that the Constitution must be interpreted as a whole. All matters touching on the subject for interpretation must be considered together in order to give effect to the purpose of the provision as intended by the framers of the Constitution. It is settled that no single provision of the Constitution should be separated from the others and considered in isolation as argued by the Petitioners in support of their case. Article 106 (3) is not a stand-alone provision in the context of the

whole of Article 106. Therefore, its interpretation must be done in harmony with the other provisions of Article 106.

[13] It is not disputed that the first term which the 1st Respondent served from 25th January, 2015 to 13th September, 2016 was an inherited term and not a complete term as defined by Article 106 (6) of the Constitution. We reiterate that the issue of the presidential term of office spanning from 25th January, 2015 to 13th September, 2016 was the subject of the decision in the **Daniel Pule and Others v. The Attorney General**⁽¹⁾ in which we exhaustively interpreted the provisions of Article 106 (1), (3) and (6) of the Constitution.

[14] We hold that Article 106 (3) when read with Article 106 (6) of the Constitution does not bar the 1st Respondent from contesting the forthcoming presidential election scheduled for 12th August 2021. For that reason we hold that the 1st Respondent's nomination which was accepted by the Returning Officer on 17th May, 2021 is valid and that the 1st Respondent, Mr. Edgar Changwa Lungu, is entitled to stand for election as President on 12th August, 2021.

[15] On that basis, the Petitions have not merit and are therefore dismissed.

[16] Each party will bear their own costs of this action.



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H. Chibomba
PRESIDENT, CONSTITUTIONAL COURT



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A. M. Sitali
CONSTITUTIONAL COURT JUDGE



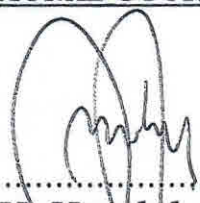
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P. Mulonda
CONSTITUTIONAL COURT JUDGE



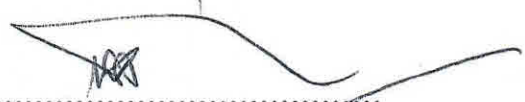
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M. Chitabo
CONSTITUTIONAL COURT JUDGE



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M. S. Mulenga
CONSTITUTIONAL COURT JUDGE



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M. Musaluke
CONSTITUTIONAL COURT JUDGE



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M. K. Chisunka
CONSTITUTIONAL COURT JUDGE



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J. Z. Mulongoti
CONSTITUTIONAL COURT JUDGE