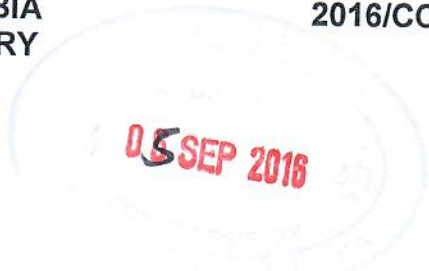


IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)

2016/CC/0031



BETWEEN:

IN THE MATTER OF:

THE PRESIDENTIAL PETITION FOR THE
PRESIDENTIAL ELECTIONS HELD ON
11TH AUGUST, 2016

AND IN THE MATTER OF:

THE CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1 OF THE LAWS
OF ZAMBIA

AND IN THE MATTER:

ARTICLES 1, 2, 5, 8, 9, 45, 47, 48, 49, 50,
54, 60, 90, 91, 92, AND 93 OF THE
CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1 OF THE LAWS
OF ZAMBIA

AND IN THE MATTER OF:

ARTICLES 128 (1) (C) OF THE
CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1 OF THE LAWS
OF ZAMBIA

AND IN THE MATTER OF:

SECTION 8 (1) (C) AND (D) OF THE
CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1 OF THE LAWS
OF ZAMBIA

AND IN THE MATTER OF:

SECTIONS 29, 37, 38, 51, 52, 58, 59, 60,
66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77,
81, 82, 83, 84, 86, 87, 89, AND 91 OF
ELECTORAL PROCESS ACT NO. 35 OF
2016 OF THE LAWS OF ZAMBIA

AND IN THE MATTER OF:

SECTIONS 110 OF ELECTORAL
PROCESS ACT (ELECTORAL CODE OF
CONDUCT) NO. 35 OF 2016 OF 2016 OF
THE LAWS OF ZAMBIA

AND

AND IN THE MATTER OF:

SECTIONS 110 OF THE ELECTRONIC
COMMUNICATIONS AND
TRANSACTIONS ACT NO. 21 OF 2009
OF THE LAWS OF ZAMBIA

BETWEEN:

HAKAINDE HICHILEMA

1ST PETITIONER

GEOFFREY BWALYA MWAMBA

2ND PETITIONER

AND

EDGAR CHAGWA LUNGU

1ST RESPONDENT

INONGE WINA

2ND RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

3RD RESPONDENT

ATTORNEY-GENERAL

4TH RESPONDENT

Before Chibomba, PC, Sitali, Mulenga, Mulonda and Munalula, JJC in open Court on 5th September, 2016

For the Petitioners:

In Person.

For the 1st and 2nd Respondents:

Mr. E.S. Silwamba, SC, Mr. J. Jalasi and Mr. L. Linyama of Eric Silwamba, Jalasi and Linyama Legal Practitioners, Mr. B.C. Mutale, SC of Ellis and Company, Lisimba and Jalasi, Prof. P. Mvunga of Mvunga Associates, Mr. S. Sikota, SC, of Central Chambers, Mr. K. Mubonda of D.H. Kemp and Company, Mrs. Suba of Suba Tafeni and Associates and Mr. N. Simwanza of Noel Legal Practitioners.

For the 3rd Respondents:

Mr. A. shonga, SC and Mr. S. Lungu of Shamwana and Company.

For the 4th Respondents:

Mr. L. Kalaluka, SC, Attorney-General.
Mr. A. Mwansa, SC, Solicitor-General.

DISSENTING JUDGMENT

I have also looked at the dissenting Judgment by Judge Munalula, I totally agree with the comments therein.

I must also say from the outset that I have had very little time to read through the majority Judgment which I was given this morning after 08.00 hours together with the Judgment by Justice Munalula. This left me with very little time to put down my thoughts in an elaborate manner.

Therefore, my comments are as follows:-

I totally agree with the decision of the majority in so far as it relates to the conduct of the learned Counsel for the Petitioners in attacking and using abusive language against the court and in singling out the single judge of the court. It is not what we expect to see or hear in our courts no matter the difference of opinion Counsel may have from that of the Court.

Whilst recognizing that the Constitution stipulates 14 days within which a Presidential Petition should be heard, that time frame does not take into account the fact that the matter must be prepared and set down for trial.

After the petition is filed, the Respondents must have time to answer and the Petitioners must have time to Reply.

This system which is founded on the adversarial system has proved impossible to achieve going by the experience we have had in this matter as a greater part of the 14 days was taken up in setting down

the Petition for trial thereby leaving us with only one day for the hearing of witnesses. It also did not allow the court to hear issues arising from the single Judge's decisions during the setting down of the matter for trial before trial could begin. The result was that the day set for hearing of witnesses was taken up by hearing and determining issues arising out of the single Judge's decisions. At the same time the court was faced with the issue of ordering the closure of the case so as to comply with the time frame stipulated. This resulted into it being impossible for us to hear any evidence from all the parties.

The time frame given in Article 101 (5) is not workable or practical and needs to be looked into so that the intention of the people of Zambia of giving parties a fair hearing and adequate time to be heard which is a fundamental Human Right upon which our Justice system is based could be achieved.

Reading Article 101 (5) and 103 (2) in isolation in my view, leads to absurdity as the Constitution in terms of Article 267 and Article 271 require the court in interpreting the Constitution to take into account the Bill of rights and the principles and values of the Constitution enunciated in Articles 8 and 9 of the Constitution.

This is what swayed us to extend the time to allow for the hearing of witnesses so that the case could be decided on its merit and I was requested to read this. I still stand by that position as the right to be

heard is fundamental and is one of the cardinal principles upon which our justice system is founded. I would have allowed the hearing of the evidence to proceed but the majority carry the day.



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H. Chibomba
PRESIDENT
CONSTITUTIONAL COURT