IN THE CONSTITUTIONAL COURT OF ZAMBIA HOLDEN AT LUSAKA

2019/CCZ/009

(CONSTITUTIONAL JURISDICTION)

IN THE MATTER OF: ARTICLE 72, 133, and 135 OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA

AND

IN THE MATTER OF: THE DECISION OF THE SPEAKER OF THE NATIONAL ASSEMBLY DATED THE 27TH FEBRUARY 2019 PURPORTING TO EXPEL THE PETITIONER FROM THE NATIONAL ASSEMBLY

BETWEEN:

CHISHIMBA KAMBWILI PETITIONER

AND

THE ATTORNEY GENERAL RESPONDENT

CORAM: Chibomba, PC, Sitali, Mulenga, Mulonda and Musaluke, JJC.
On 20th August, 2019 and on 18th February, 2020.

For the Petitioner: Mr. C. L. Mundia and Ms. J. Lungu, both of C.L. Mundia and Company.

For the Respondent: Mr. A. Mwansa, S.C., Solicitor General.
Mr. F. K. Mwale, Principal State Advocate.
Ms. D. Mwewa, Acting Assistant Senior State Advocate.

J U D G M E N T

Chibomba, PC, delivered the Judgment of the Court

Cases cited:

1. Kapoko v The People (2016) 3 Z.R. 255
2. Attorney General and The Movement of Multiparty Democracy v AkashambatwaMbikusitaLewanika and Others (1993-1994) ZR 164.
3. Rupiah BwezaniBanda v The Attorney General 2013/HP/0347 (Unreported)
4. Re NaluminoMundia (1971) Z.R.70
5. Zambia Democratic Congress v The Attorney General, (2000) Z. R. 6
6. Bradlaugh v Gossett (1884) 12 QBD 271

7. Attorney General v Speaker of the National Assembly and Dr. Ludwig Sondashi, M.P. (2003) Z. R. 42
8. Raja RamPal v The Honourable Speaker and Others MANU/SC/0241/2007
9. De Lille and Another v Speaker of the National Assembly and Others Case No. 297/98
10. State of Kerala v R Sudarsan Courts Bahu and Others AIR 1984 Ker 1 (S.C.)
11. Communications Authority v Vodacom Zambia Limited, (2009) Z.R. 196

Statutes Cited:

1. The Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The National Assembly (Powers and Privileges)Act Chapter 12 of the Laws of Zambia
3. The Constitution of Zambia, Chapter 1 of the Laws of Zambia
4. The Constitution of Zambia Act No. 18 of 1996

Other Materials cited:

1. M.J.C. Vile, Constitutionalism and the Separation of Powers (2nd Ed) [1967]
2. Erskine May's Treatise on the Law, Privileges, Proceedings and Useage of Parliament
3. Black's Law Dictionary, 8th Edition
4. M.N. Kaul and S.L.Shakdher, Practice and Procedure of Parliament, sixth edition, (New Delhi, Metropolitan Book Company P.V.T. Limited, 2009)
5. Warren J Newman, Parliamentary Privilege, The Canadian Constitution and the Courts, 2008, CanLIIDocs 118
6. MulengaBesa, Constitution, Governance and Democracy, 2011, Mission Press, Ndola
7. Oxford Dictionary of Law, Oxford University Press, 5th Edition, 2002

This Petition was brought by Mr.ChishimbaKambwili against the Attorney General as the Respondent. The Petitioner seeks the following remedies from the Respondent:

1. **A declaration and order that the Ruling of the Speaker dated 27th February, 2019 is null and void *ab initio;***
2. **A declaration and order that the Petitioner did not cross the floor as ruled by the Speaker of the National Assembly;**
3. **A declaration and order that the Petitioner's seat did not fall vacant as ruled by the Speaker of the National Assembly;**
4. **Any other remedies the Court may deem fit and just; and**
5. **Costs.**

The brief background to this Petition is that on 27th February, 2019 the Speaker of the National Assembly declared the Roan Parliamentary Seat vacant on the basis that the Petitioner had left the

Patriotic Front (PF), the political party on which he was elected as Member of Parliament, and that he had joined the National Democratic Congress (NDC).

The Petition was filed together with an Affidavit verifying facts and Skeleton Arguments upon which Counsel for the Petitioner, Mr. Mundia, relied. In the said Affidavit, the Petitioner deposed that until 27th February, 2019 he was serving his third consecutive term of office as a member of parliament for Roan Constituency. And that he learnt on the stated date, through the media, that the reason behind the Speaker's declaration was the alleged crossing of the floor and that the Speaker had taken the view that since he was offering consultancy services to NDC, his role was akin and/or similar to that of a party member holding a leadership position.

After reproducing the Speaker's Ruling, the Petitioner went on to depose that the Speaker of the National Assembly deliberately made pronouncements on a matter that was *subjudice* as questions relating to the consultancy role that the Petitioner took on under the NDC political party were a subject of active litigation before a Judge of the High Court.

The Petitioner stated that even assuming that he had joined the NDC, which fact he denies, the Speaker acted on provisions that do

not provide for alleged floor crossing as provided in the Constitution of Zambia.

In the Skeleton Arguments in support of the Petition, the Petitioner argued in sum that the Speaker, through his Ruling, took on the role of the Court of interpreting the law. That this amounted to the Legislature usurping the powers of the Judiciary by enacting laws and at the same time interpreting the law. In so arguing, the Petitioner paid credence to the works of Mrs Doris KataiKatebeMwiinga, as Clerk of the National Assembly of Zambia in her paper on **The Legislature and the Judiciary: A Balance of Power, Geneva Session October, 2014** as well as our decision in the caseof**Kapoko v The People**[1].

It was contended that the question as to whether or not he was a member of the NDC was a matter for the Courts to determine more so that the **Societies Act** does not expressly associate consultancy services with membership of a political party.

Counsel for the Petitioner invited the Court to consider Article 72 of the Constitution of Zambia as amended, and argued that there was no express provision warranting the declaration of a seat vacant where a member who, whilst in the House, elects to join another political party. That the Speaker, therefore, did not possess the power to interpret, amend or add to the provisions of the Constitution.

The Petitioner also took issue with the Speaker's Ruling when he relied on the case of **Attorney General and the Movement for Multiparty Democracy v AkashambatwaMbikusitaLewanika and Others**[2]. He contended that it was unconstitutional for the Speaker to rely on a case which interpreted repealed law which is not even identical to Article 72 of the Constitution as amended.

It was the Petitioner's further argument that since the question of his consultancy position was at the material time the subject of active litigation before the High Court under Cause Number 2017/HP/1238, the Speaker acted in breach of Articles 119 and 122 of the Constitution as amended by usurping and interfering with the powers of the Judiciary. Citing the case of **Rupiah Banda v The Attorney General**[3], it was advanced that the Speaker cannot pronounce himself on matters that are before the Courts of law as it is likely to violate the Petitioner's right to a free and fair hearing. And that irrespective of the rights and privileges of the Speaker, where he is in breach of the Constitution and acts outside his powers, the Courts are to provide checks and balances. The Petitioner, thus, prayed that the reliefs sought in his petition be upheld.

In augmenting the arguments advanced in the Petitioner's Skeleton Arguments, learned Counsel for the Petitioner, Mr. Mundia, began by drawing our attention to the Speaker's Ruling, particularly, at

paragraphs 23 to 30 of the record of proceedings. He submitted that these paragraphs show that the Speaker admitted that there was a lacuna in Article 72 of the Constitution as regards a member of parliament who belongs to a political party and joins another political party. However, that in declaring that the Petitioner had crossed the floor, the Speaker relied on the decision of the Supreme Court of Zambia in the case of **Attorney General, Movement for Multiparty Democracy vAkashambatwaMbikusitaLewanika and Others**[2]. Counsel submitted that this particular precedent in so far as floor crossing is concerned has been superseded by the provisions of Article 72 as the envisaged floor crossing does not exist anywhere.

It was Counsel's further contention that the literal interpretation of Article 72 shows that the floor crossing which the Speaker pronounced himself upon is not at all provided for in Article 72, which is not illustrative but conclusive. Counsel's contention was, therefore, that even if the Court adopted a purposive approach to the interpretation of Article 72, the Speaker's interpretation could still fail on the ground that floor crossing in the **Attorney General and the Movement for Multiparty Democracy v AkashambatwaMbikusitaLewanika and Others**[2] was pronounced upon 22 years ago before the new Article 72 of the Constitution was enacted in February, 2016. It was Counsel's further submission that

legislators were clearly well informed of the said floor crossing but they chose not to provide for the same in the Constitution.

It was Counsel's contention that further scrutiny of the decision in the case of **Attorney General and the Movement for Multiparty Democracy v AkashambatwaMbikusitaLewanika and Others**[2] relied upon by the Speaker will show that the decision was inspired by giving credence to the notion that independent members of parliament would be discriminated against in violation of Article 23 but that this Court does not have jurisdiction to delve into matters of discrimination in Part III of the Constitution which can only be triggered by a petition invoking Article 28.

It was Mr. Mundia's further contention that the Speaker in this matter went on to pronounce himself on the matter which was *sub-judice* as it was before the High Court. He submitted that the Petitioner, thus, seeks 'guidance' of this Court as to whether the Speaker was in breach of Articles 133 and 134. Counsel argued on this point that he was alive to the provision of Article 77 (1) in so far as the powers of the National Assembly to regulate its own proceedings by and large that are unfettered. In concluding his argument, Counsel submitted that whilst the National Assembly has such powers under Article 77 (1), the exercise of such powers must not be done in a manner that violates other provisions of the Constitution and in this

particular case, he referred to the provisions of Articles 133 and 134 which respectively provide for establishment and composition of the High Court and jurisdiction of the High Court. Counsel's prayer was that the relief sought in the petition should be granted.

On the other hand, in opposing the Petition, the learned Solicitor General, Mr. Mwansa, SC, relied on the Answer to the Petition and skeleton arguments filed. In the Answer, the Respondent denied all the allegations made by the Petitioner. It was pointed out that the Speaker's Ruling was as a result of the Petitioner's decision to join the NDC when his election to the house was sponsored by the PF and that the decision of the Speaker was anchored on the fact that the Petitioner had publicly declared that he runs a political party and was in fact leader of the NDC. Further, that the Petitioner was contacted and informed of the delivery date of the Ruling. He contended that there is a clear distinction between the proceedings in which the Speaker declared the Roan Parliamentary Seat vacant and the proceedings before the High Court under Cause No. 2017/HP/1238. The Respondent submitted that the National Assembly proceedings were internal and that the Speaker, though, notified of the court proceedings, was not privy to the details of the cause of action as he was not party thereto.

It was the Respondent's position that the decision in **Attorney General and the Movement of Multiparty Democracy v AkashambatwaMbikusitaLewanika and Others**[2]is still good law and therefore, the Speaker did not breach any constitutional provisions.

In the Affidavit in support of the Answer deposed to by Cecilia Sikatele in her capacity as Deputy Clerk Procedure, National Assembly, it was averred that the Speaker informed the Electoral Commission of Zambia of the vacancy relating to the Roan Parliamentary seat in accordance with the provisions of the Constitution.

In the Skeleton Arguments filed, the Respondent conceded that Article 72 of the Constitution does not stipulate that a parliamentary seat shall fall vacant where an MP elected to the house on a party ticket, joins another political party. That prima facie, a member who is elected to the National Assembly on a party's ticket and during the tenure of that parliament, joins another political party does not lose his seat. This interpretation, the Respondent reasoned, would however, be discriminatory as it suggests that only independent members are proscribed from crossing the floor. That such an interpretation produces an absurdity which flies in the teeth of Article 23 of the Constitution.

The Respondent contended that the *lacuna* can only be resolved in line with the Supreme Court decision in **Attorney General and Movement for Multiparty Democracy (MMD) v Lewanika and Others**[2], that is, by purposively construing Article 72 (2) (d) and (g) of the Constitution to mean that an MP shall vacate his seat if he resigns from the party which sponsored him for election to the National Assembly, and becomes an independent or joins a political party other than the party on whose ticket he was elected.

It was the Respondent's position that Article 77 (1) of the Constitution empowers the National Assembly to regulate its own procedures for the conduct of its business. The Respondent referred to this freedom as 'exclusive cognizance' and suggested that this doctrine is embodied in section 34 of the National Assembly (Powers and Privileges) Act which provides that-

> **"Neither the Assembly, the Speaker nor any officer shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker, or such officer by or under the constitution, the standing orders and this Act."**

Citing **Erskine May's Treatise on the Law, Privileges, Proceedings and Useage of Parliament** and the case of **Re-Nalumino Mundia**[4] as well as authorities from other jurisdictions, the Respondent submitted that where a power is vested in the National Assembly by the Constitution, the National Assembly (Powers and

Privileges) Act, and the Standing Orders, the Court's jurisdiction is ousted. That however, after the National Assembly has exercised its powers, its decisions can be challenged if they are unconstitutional, or illegal.

The Respondent argued that exclusive cognizance is grounded in the doctrine of separation of powers as it prevents the other two branches of government from inquiring into the proceedings of parliament.

With respect to the question whether or not the Speaker offended the *sub judice* rule, the Respondent extensively quoted the works of **M.N. Kaul and S.L Shakdher, Practice and Procedure of Parliament, sixth edition, (New Delhi, Metropolitan Book Company P.V.T. Limited, 2009)** and submitted that the *sub judice* rule is not absolute and the Speaker reserves the right to determine whether a particular matter is *sub judice*.

Picking a leaf from England, the Respondent contended that the law and custom of Parliament in England has shown or revealed that successive Speakers have exercised their discretion to allow matters to be discussed although they fall within the strict terms of the *sub judice* rule where they have considered that no substantial risk of prejudicing proceedings would arise. That according to Standing Order 52 of the National Assembly of Zambia Standing Orders, 2016, once a

point of order is raised, the Speaker is duty bound to address the issues raised in the point of order. That this is more so that the Ruling did not prejudice the court proceedings.

The Respondent argued in the alternative that the evidence before the Speaker was that the Petitioner was carrying out a form of dual membership and that this Court must condemn the same. He then went on to invite us to consider the absurdity that would follow if the Speaker's decision is rendered null and void. That such a decision would essentially translate into there being two elected members of parliament for Roan Constituency.

In augmenting the arguments advanced in the Respondent's Skeleton Arguments, Mr. Mwansa, SC, began by reiterating that in terms of Article 77 of the Constitution as read together with Section 34 of the National Assembly, Powers and Privileges Act, Chapter 12 of the Laws of Zambia, and Standing Order 52 of 2016, the National Assembly has powers to regulate its practice and procedure. That in the current case, a motion was raised on the floor of the House and the Speaker was constitutionally mandated to make a decision on the motion, which decision, essentially, was a declaration of the Roan Constituency seat vacant. He submitted that the Speaker, thus, properly exercised his jurisdiction.

In response to Mr. Mundia's argument that this Court was being invited to consider the provisions of Article 23 that deals with discrimination, Mr. Mwansa, SC, submitted that the State is alive to the fact that matters relating to Articles 13 to 26 inclusive, can only be brought to court by way of a petition in the High Court and not before this Court. Hence, the Respondent is inviting this Court to interpret the provisions of Article 72 of the Constitution. That, it would not have been the intention of the Legislature to allow a member of the National Assembly, elected on a particular platform of a political party, to leave their political party and join another political party and yet remain a member of the National Assembly. And that he had combed through Article 72 and other provisions of the Constitution and had not seen anywhere, where dual membership is permitted. It was, therefore, his submission and he urged this Court to so interpret, that a parliamentary seat becomes vacant when a member of the National Assembly elected on a particular political party ticket elects to join another political party in line with the decision in **Attorney General and the Movement for Multiparty DemocracyvAkashambatwaMbikusita Lewanika**[2] which he submitted still remains good law.

Mr. Mwansa, SC, submitted that it is a notorious fact that following the declaration of the Roan Constituency seat vacant, elections were held and one, Joseph Chisala, was elected as a

Member of Parliament for that Constituency. And that in the event that this Court declares the decision of the Speaker illegal and of no effect, it would entail that the Petitioner would remain a Member of Parliament and the elected member, Joseph Chisala, would equally remain a Member of Parliament. That, that in itself will create an absurdity and a constitutional crisis as the number of Members of Parliament would go beyond the stipulated number for each constituency and secondly, that the total number of Members of Parliament and nominated members would also go beyond the stipulated number. He, thus, invited the Court to pronounce itself as regards the jurisdiction of the National Assembly on practice and procedure and when such decisions may be challenged in the courts of law. He urged the Court to dismiss this petition with costs as it was an academic exercise which takes away the precious time of this Court to attend to other matters.

In reply, Mr. Mundia submitted that the notion that the petition before this Court should be dismissed for being a mere academic exercise as advanced by learned Solicitor General, is an argument which is self defeating and contradictory as the State still went ahead to ask the Court to pronounce itself on very serious constitutional issues which have never been tested in the Zambian jurisdiction in so far as the new provision of the Constitution is concerned. Counsel relied on the case of **Zambia Democratic Congress v the Attorney**

General[5] where the Supreme Court of Zambia, which when faced with an academic appeal, (a fact Counsel denied in this particular matter), still went on to pronounce itself because the appeal had raised very serious constitutional issues as the case in *casu*. Counsel submitted that if it was the intention of the drafters of the new constitutional dispensation that a Member of Parliament belonging to one political party will be deemed to have crossed the floor by assuming membership of another political party, they would have provided so.

He reiterated that the argument that the *lacuna* was cured by the case of **AkashambatwaMbikusitaLewanika and Others v Attorney General**[2], is not applicable in this particular instance as the legislators and the drafters of the Constitution were alive to the problems emanating out of the then Article 71 (c) which the Supreme Court in the above cited case was called upon to pronounce itself. It was Counsel's submission that having known of these pronouncements, the drafters would have provided for that particular floor crossing.

We have considered the contents of the petition and the affidavit verifying facts, the Respondent's Answer and affidavit in support thereof. We have also considered the oral submissions by learned Counsel on behalf of the parties to this petition as well as the authorities cited. It is our considered view that the main question raised in this matteris whether the Ruling of the Speaker dated 27th

February, 2019 is null and voidab *initio* on ground that the matter was *sub judice* and that in arriving at his decision that the Petitioner had crossed the floor and consequently that his seat had fallen vacant, the Speaker usurped the powers of the courts thereby breaching Articles 119 and 122 of the Constitution. Although the learned Counsel for the Parties did cite a number of authorities in support of their respective positions, some of the authorities did not have full citations and copies of the same were not availed to the Court. We shall therefore not consider them.

Before tackling the above question, we wish to start by laying out the salient facts of this matter as we have comprehended them. These are that during the 2016 general elections, the Petitioner was elected Member of Parliamentfor Roan Constituency on the ticket of the PF partywhich sponsored him. In 2017, the Petitioner was expelled from the PF by the Party's Central Committee. Following his expulsion, the Petitioner challenged the decision of the Central Committee to expel him from the party in the Lusaka High Court under Cause No. 2017/HP/1238 in which he, *inter alia,* alleged that his expulsion from the PF was illegal and without basis as it was contrary to the PF Party constitution and disciplinary procedures and that due process was not followed as he was not informed ofthe charges levelled against him nor was he given an opportunity to exculpate himselfagainst the said charges.

In the Defence filed in the High Court, the Secretary General of the PF denied the allegation and also filed a counterclaim alleging, *inter alia,* that the Petitioner was exercising executive functions of an office bearer of the NDC Party and that since the NDC was not the party that sponsored his candidature to the National Assembly, the Petitioner should be deemed to have resigned from the PF. And consequently, that the Petitioner's seat as Roan Member of Parliament be declared vacant. However, on 25th October, 2018 the High Court dismissed the Petitioner's case for want of prosecution. The Petitioner then filed a notice of appeal to the Court of Appeal under Appeal No. CAZ/08/261/2018 challenging the dismissal of the matter. By the date of hearing of the petition, both the Appeal to the Court of Appeal and the counterclaim by the Respondent had not yet been disposed of by the two courts.

On 21st February, 2019 a point of order was raised on the floor of the House by Malambo Member of Parliament, who is also Minister for Eastern Province, Hon. Makebi Zulu, as to whether or not it was in order for the Petitioner to retain his seat when he had admitted being a leader of a political party other than the one that sponsored his candidature.Through the Ruling of 27th February, 2019 the Speaker found that the Petitioner had joined theNDC by virtue of rendering consultancy services to that party. The Speaker went on to highlight that Article 72 (2) of the Constitution as amended was silent on

whether the Petitioner's actions rendered the Roan Parliamentary seat vacant. The relevant parts of the Speaker's Ruling are as follows:

> **"Hon Members, it is self-evident that in the Lewanika case, by using the purposive approach, the Supreme Court read into the statute the words "or vice versa" to prevent the discriminatory and absurd result of an independent member who joins a political party having to vacate his or her seat, while a member of a political party who leaves his political party retains his or her seat as an independent.**
>
> **In the instant case, applying the purposive approach to statutory construction, I similarly construe Articles 72 (2) (d) and (2) (g) of the Constitution to mean that a member of the national assembly shall vacate his or her seat in the Assembly, if the member resigns from the political party, which sponsored the member for election to the National Assembly, and becomes an independent or, a member having been elected to the National Assembly, as an independent candidate, joins a political party or, if a member becomes a member of a political party other than the party on whose ticket he was elected to the National Assembly.**
>
> **Therefore, Hon Members, a member who leaves the political party on whose ticket he or she was elected to the House, to join another political party, loses his or her seat.**
>
> **Hon Members, in view of the fact that Dr Kambwili, MP, who was elected to this House on a ticket of the Patriotic Front party, has become an office-bearer and consequently, member of the NDC, by virtue of assuming the position of Consultant of the NDC, he has crossed the floor. And, accordingly, vacated the Roan Parliamentary seat. I accordingly declare the Roan Parliamentary seat vacant. Therefore, DR C Kambwili, MP, was, out of order to sit in the House.**
>
> **I therefore, order you DR C Kambwili, MP, to leave the House and its precincts immediately. I thank you."**

We have also found it imperative to, at this stage, consider how the provision(s) relating to when a member of parliamentcan be said to have vacated/losthis seat in parliament has evolved. We shall startwith the 1991 Constitution, which re-introduced multi-party democracy in Zambia. Article 71 (2) (c) of the 1991 Constitution provided that a member of the National Assembly shall vacate his seat in the Assembly in the case of an elected member, if he becomes a

member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party or having been a member of a political party, he becomes an independent.

Following the 1996 constitutional amendments, the provisions of Article 72(2)(c) under the pre-1996 constitutional amendments were retained. In terms of the 2016 constitutional amendments, the relevant parts of Article 72 of the Constitution as amended now provides as follows-

Article 72

....

(2) The office of Member of Parliament becomes vacant if the member—

(a) resigns by notice, in writing, to the Speaker;
(b) becomes disqualified for election in accordance with Article 70;
(c) acts contrary to a prescribed code of conduct;
(d) resigns from the political party which sponsored the member for election to the National Assembly;
(e) is expelled from the political party which sponsored the member for election to the National Assembly;
(f) ceases to be a citizen;
(g) having been elected to the National Assembly, as an independent candidate, joins a political party;
(h) isdisqualified as a result of a decision of the ConstitutionalCourt; or
(i) dies."

.....

(5) Where a Member of Parliament is expelled as provided in clause (2) (e), the member shall not lose the seat until the expulsion is confirmed by a court, except that where the member does not challenge the expulsion in court and the period prescribed for challenge lapses, the member shall vacate the seat in the National Assembly.

(6) Where a court determines that an expulsion of a member, as provided in clause (2) (e), was not justified, there shall be no by-election for that seat and the member shall opt to—

(a) remain a member of the political party and retain the seat; or

(b) resign from the political party and retain the seat as an independent member.

(7) Where a court determines that an expulsion of a member, as provided in clause (2) (e), was justified, the member shall vacate the seat in the National Assembly.

(emphasis added)

In the current case, the Petitioner has in his first prayer, sought a declaration that the Ruling of the Speaker dated 27th February, 2019 which declared the Petitioner's seat vacant on ground that the Petitioner had joined a political party other than the political party on whose ticket he had been elected and consequently that, he had vacated his seat, was null and void*ab initio*. In support of the Petitioner's position that the said Ruling is null and void*ab initio*,the Petitioner argued that the Speaker, by so holding, acted outside his powers as he breached Articles 119 and 122 of the Constitution as amended and that he thereby usurped the powers of the courts of the land because the matter that he decided upon was *sub judice* as it was pending determination by the High Court. It was the Petitioner's further argument that this Court has the power to interfere and render the Speaker's decision null and void.

The Respondent's response to the Petitioner's position that this Court has the power to interfere and render the Speaker's decision null and void was the defence of the plea of the principle of "exclusive cognisance." It was the Respondent's argument that the National

Assembly retains the right to be the sole judge of the lawfulness of its own proceedings. In support of the above position, the Respondent referred us to Article 77 (1) of the Constitution as amended, which provides that the National Assembly has power to regulate its own procedures. Reference was also made to Section 34 of the **National Assembly (Powers and Privileges) Act** which, the Respondent argued,has ousted the jurisdiction of the Courts of law in so far as the exercise of powers by the National Assembly is concerned as is the position in the current case.

We have paid careful consideration to the parties' submissions. It is clear to us that the plea of exclusive cognisance is fundamental to the determination of this case as it lies at the root of this matter. We consider it appropriate, therefore, to discuss the principle of exclusive cognisance, within the broader doctrine of separation of powers, in order to properly appreciate how that concept impacts the instant case.

The doctrine of exclusive cognisance connotes the privileges and immunities enjoyed by the legislative branch of Government in the discharge of its functions or in the regulation of its affairs to the exclusion of other branches of government. In the context of our Constitution, the freedom of Parliament to regulate its own affairs has

its genesis or origin in Article 77(1) of the Constitution, to which our attention was called by the Respondent. Article 77(1) reads:

> **Subject to this Article and Article 78, the National Assembly shall regulate its own procedure and make Standing Orders for the conduct of its business.**

The old English case of **Bradlaugh v Gossett**[6] is illustrative on the question of exclusive cognisance or parliamentary privilege. In that case, a question arose whether Bradlaugh who had been returned a member had qualified himself to sit by making an affirmation instead of taking an oath. Later, he was prevented from taking the oath by an order of the House. In the course of the judgment to have the order declared void, Lord Coleridge stated thus:

> **What is said or done within the walls of Parliament cannot be inquired into in a court of law.... The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive.**

And Stephen J, had the following to say in the same case:

> **I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its own internal proceedings....**

Writing on parliamentary privilege in the Canadian constitution, the learned author Warren J. Newman, provided the following quote to highlight the importance of parliamentary privilege:

> **Parliamentary privilege is the necessary immunity that the law provides for Members of Parliament...in order for these legislators to do their legislative work. It is also the necessary immunity that the law provides for anyone while taking part in a proceeding in Parliament....The legislative body needs this legal protection or immunity to perform its function and to defend and vindicate its authority and dignity.**

Here at home, the case of **Inre Nalumino Mundia**[4], presents an example of the application of the doctrine of exclusive cognizance. It involved an application for leave to apply for an order of *certiorari* directed at the chairperson of the Standing Orders Committee of the National Assembly of Zambia requiring him to remove into the court, for the purpose of having it quashed, an order suspending the applicant, NaluminoMundia, from the National Assembly for a period of three months.

In his judgment, Hughes J, observed that the application raised an important constitutional issue regarding the extent of the High Court's jurisdiction in relation to the affairs of Parliament.He noted that the question had led to considerable conflict in England in reconciling the law of privilege of the Houses of Parliament with the general law. In resolving the matter and concluding that the court had no power to interfere with the exclusive jurisdiction of the National Assembly in the conduct of its own internal proceedings, the learned Judge relied on the following observation in Erskine May's Parliamentary Practice, 17th Edition:

> **The solution gradually marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these, which are supported by a great weight of authority, are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt.**

Section 34 of the National Assembly (Powers and Privileges) Act, to which we were referred, encapsulates the doctrine of exclusive congnisance in the following terms:

> **Neither the Assembly, the Speaker nor any officer shall be subject to thejurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker, or such officer by or under the Constitution, the Standing Orders and this Act.**(emphasis added)

The Attorney General argued that section 34 aforesaid ousts the jurisdiction of the courts in relation to the performance of powers given to the National Assembly by the Constitution, the National Assembly (Powers and Privileges) Act and the Standing Orders in relation to its internal proceedings.

We have considered the above provisions. The wording of Article 77(1) of the Constitution is clear and we agree that it does grant the National Assembly power to regulate its own procedure and to make standing orders for the conduct of its business. In our considered view, the regulation of its procedure and the making of Standing Orders are internal matters in the functioning of the National Assembly. The powers and privileges accorded to the National Assembly by the Constitution in Article 77(1) aforesaid are a necessary adjunct to the legislative and deliberative functions conferred by the Republican Constitution on the Legislature.

In the current case, the Petitioner has alleged breach or contravention of the Constitution by the Speaker of the National Assembly. The Petitioner argued that the Speaker, in declaring that the Petitioner's seat in the assembly was vacant on ground that he had crossed the floor, he did not only decide on a matter that was *sub judice* but that he also usurped the powers of the courts of the land and thereby breaching Articles 119 and 122 of the Constitution. Essentially, the Petitioner's allegation involves encroachment by one branch of government into another's terrain and brings to the fore the doctrine ofseparation of powers. It is trite that at the heart of the doctrine of separation of powers is the division of powers between three branches – the Executive, the Legislature and the Judiciary – in order to repel threats attendant to the concentration of powers in one area. That specific functions, duties and responsibilities are allocated to distinctive institutions with a defined means of competence and jurisdiction. The learned author **M.J.C. Vile,** in his book,**Constitutionalism and the Separation of Powers (2nd Ed),**aptly put it:

> **It is essential for the establishment and maintenance of political liberty**
> **that the government be divided into three branches or departments,the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches.**

And discussing the concept of separation of powers and the historical background of this concept, the learned author **MulengaBesa,**in his book,**Constitution, Governance and Democracy,**writes:

> **The ideals on separation of powers expressed by the three philosophers all point to the importance of governing the country under the three institutions; all operating within their perimeters so as to ensure the smooth governance of a country. Aristotle identified the three elements under which constitutional governance is to be conducted. Bolingbroke spoke of the need for harmony between the people through their representatives in parliament as a means of liberty and state security and Montesquieu spoke on the need for the independence of the judiciary as a means through which liberty of the people would be guaranteed, and violent and oppressive tendencies against the people by the government would be prevented. The three philosophers all point to the need, not for complete separation in the manner they exercise their functions, but for separateness of one by the other in their designated functions so that none of the three performs the functions of the other, and in so doing, each checks the manner in which the other exercises its functions....The preposition is therefore on the need for independence of the three institutions in exercise of their constitutional powers and functions.**

Thus, the doctrine of separation of powers entails a system where each of the three branches of government acts or works independently of the others so as to foster democracy and accountability. Writing in 1959, Professor Dicey opined that the doctrine of separation of powers rests on the necessity of preventing the executive, the legislature and the judiciary from encroaching upon one another's province. That notwithstanding, the concept of checks and balances connotes that what is envisaged is not complete separation of powers. Within allowable limits, the concept of checks and balances ensures that no arbitrariness ensues in the exercise of

what is otherwise legitimate functions – to make the branches of government accountable to each other.

The central grievance in the current case is that the Speaker of the National Assembly acted outside his powers and breached Articles 119 and 122 of the Republican Constitution when he ruled on a matter that was *sub judice*. Essentially, that the Speaker acting on behalf of the Legislature, encroached on functions otherwise reserved for the Judiciary by the Constitution. The key question, therefore, is whether, the Court can intervene in what is purportedly the exercise of constitutional functions by the Speaker.

Within our jurisdiction, there is precedence illustrating that the Judiciary has been prepared to inquire into the constitutionality of an action or decision of a State organ or functionary, including itself. In the case of **Attorney-General v The Speaker of the National Assembly and Dr. Ludwig Sondashi, MP**[7]the Supreme Court agreed with the learned High Court Judge that the Courts in Zambia, through judicial review, can scrutinize the actions of the National Assembly or of the Speaker where there is an allegation that there was contravention of the Constitution. It is a position we totally endorse.

In light of the foregoing, we hold the view that there must always be recognition of what power a person or authority has and where it comes from. Where the source of the power does not permit

its exercise beyond that conferred, then the person or authority must desist from exercising that power as the doctrine of separation of powers and the concept of checks and balances by the Judiciary will scrutinize the exercise of that power as this is vital in the governance of the country if meaningful democracy is to be assured. Hence, the concept of checks and balances and judicial scrutiny are the bedrock of separation of powers. It must be noted that the Legislature, the Executive and the Judiciary are all creatures of the Constitution. As such, each of these three arms of the Government can only exercise the powers given to them by the Constitution itself. In our constitutional democracy, public power, such as that available to the three branches of government, is thus subject to constitutional control, which inherently requires of them to act within their boundaries.

It follows from the foregoing, that although the Constitution gives the National Assembly powers to regulate its own procedure as well as to make standing orders for the conduct of its business as has been submitted by the Attorney General, this power is not absolute as the courts of the land have the constitutional mandate to scrutinize the acts of the Legislature where it is alleged that the Legislature or indeed the Speaker, in the exercise of its or his mandate has breached or exceeded its or his power as enabled by the Constitution.

The Petitioner's argument in this matter in fact touches on this doctrine of separation of powers and the need for each arm of government to confine itself to its own constitutional mandate and not to encroach on the others' functions. So clearly where the allegation is that there was encroachment by the Speaker on the Judiciary's constitutional mandate, the Courts have the power to scrutinize the allegation to determine whether indeed there was such encroachment.

In order for this Court to do this, we have to consider the constitutional mandates of both the Legislature and the Judiciary so as to determine whether or not the alleged encroachment has been proved by the Petitioner. In this regard Articles 63 and 119 of the Constitution, which outline the functions of the Legislature and Judiciary, respectively, are instructive. Article 63, on the mandate of the National Assembly, provides as follows:

> **63. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President**
>
> **(2) The National Assembly shall oversee the performance of executive functions by—**
>
> **(a) ensuring equity in the distribution of national resources amongst the people of Zambia;**
>
> **(b) appropriating funds for expenditure by State administration, local authorities and otherbodies;**
>
> **(c) scrutinising public expenditure, including defence,constitutionaland special expenditure;**
>
> **(d) approving public debt before it is contracted; and**

> **(e) approving international agreements and treaties before these are acceded to or ratified.**

The relevant parts of Article 119 of the Constitution, which vests judicial authority of the Republic in the Judiciary, is couched in these terms:

> **(1) Judicial authority vests in the courts and shall be exercised by the courts in accordance with this Constitution and other laws.**
>
> **(2) The courts shall perform the following judicial functions:**
>
> **(a) hear civil and criminal matters; and**
>
> **(b) hear matters relating to, and in respect of, this Constitution** (emphasis added).

Further, and specific to the Constitutional Court, Article 128 (1) (a) of the Constitution provides as follows:

> **"(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."**

Furthermore, Article 1 (5) states:

> **"A matter relating to this Constitution shall be heard by the Constitutional Court."**

From the above provisions, it is clear that in broad terms, the National Assembly has the constitutional mandate of legislating and overseeing the performance of the executive functions of the State and also of providing checks and balances on the other arms of government. It is also clear from Article 119 of the Constitution as amended that the mandate to interpret the law and the Constitution has been given to the courts of the land.

We also note that by virtue of Article 77(1) of the Constitution as read together with Section 34 of the **National Assembly (Powers and Privileges) Act** which we quoted earlier, the National Assembly has exclusive power and jurisdiction over the conduct of its internal affairs. However, the question is whether in the exercise of such power there was breach of its constitutional mandate as has been alleged by the Petitioner and that consequently, the exclusive cognisance defence is not available to the Respondent. Our view is that the power of the National Assembly in this regard is not limitless and cannot be exercised in a manner that trespasses on the constitutional mandate of another state organ.

The question that follows, therefore, is whether the allegations which have been made in the current case fall within the exclusive mandate of the National Assembly that is covered by Article 77 (1) as well as Section 34 aforesaid. In other words, is the defence of exclusive cognizance available to the Respondent in this case? It is our firm view that the defence of exclusive cognisance is only available when the National Assembly or the Speaker is dealing with a procedural or internal matter. It is our firm view that the question whether or not the Petitioner had crossed the floor thereby resulting into the nullification of his seat in Parliament is not an internal or procedural matter which falls squarely under Article 77 (1) of the Constitution or capable of ousting the power of the Courts to scrutinize that decision under Section 34 of

the **National Assembly (Powers and Privileges) Act** as alleged by the Attorney General. We say so because the same Constitution has not only given power to the Judiciary to interpret the law and the Constitution but it also contains provisions as to how a Member of Parliament can be said to have vacated his seat. Clearly, where there is an allegation of contravention of the Constitution by the Legislature, the Court has the power to investigate the alleged breach of the Constitution.

Our further view is that Section 34 of the **National Assembly (Powers and Privileges) Act** relied upon by the Respondent relates to acts pertaining to the conduct of the internal matters of the National Assembly. Does it oust the powers of the courts enshrined in the Constitution? We do not consider that to be the case. The Constitution is the supreme law of the land. In stressing the supremacy of the Indian Constitution, the Supreme Court of India in the case of **Raja Ram Pal v The Honourable Speaker[8] and others** stated:

> **It is necessary to assert in the clearest terms...that the Constitution is supreme lex, the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority.**

We endorse that view. Our firm view is that section 34 aforesaid does oust the jurisdiction which has been given to the courts by the Constitution, the paramount or supreme law of the land. The

allegations in the instant case touch on alleged violations of constitutional provisions. 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 and, in our firm view, what may be inquired into by this Court in relation to the Constitution includes provisions covering the National Assembly. To illustrate, though for persuasive value only, we find comfort in the observation made by the Supreme Court of Appeal of South Africa in the case of **De Lille and Another v Speaker of the National Assembly and Others**[9] in which the court in that country interrogated the constitutional authority of their National Assembly to suspend a member of parliament for her utterances in the house. Commenting on the supremacy of the constitution in relation to the parliament, the court observed at pages 5-6 as follows:

> **This enquiry must crucially rest on the Constitution of the Republic of South Africa. It is Supreme - not Parliament. It is the ultimate source of all lawful authority in the country. No Parliament, however bona fide or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution. Section 2 of the Constitution expressly provides that law or conduct inconsistent with the Constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any decree, order or action of any official or body, which is not properly authorised by the Constitution is entitled to the protection of the Courts. No Parliament, no official and no institution is immune from Judicial scrutiny in such circumstances."** (emphasis added)

The Indian case of **State of Kerala v R Sudarsan Courts Bahu and Others**[10], in which the High Court of India sitting as a full bench

addressed the question whether the acts of the legislature or its members are immune from court scrutiny under all circumstances, the court observed that the immunity only related to procedural aspects before the legislature. The Chief Justice of India sitting as part of the bench, at page 14, put it thus:-

> **"The Indian Constitution conceives the judiciary and the legislature as different organs of the State having independent specified functions. Justas it is within the power of the Legislature to exercise all functionsconferred on it there are functions conferred on the judiciary by theConstitution which it is expected to perform in accordance with theConstitution... True democratic spirit calls for mutual respect by theseinstitutions and avoidance of trespass. The decision in the reference casehas, to a considerable extent, resolved the controversy as to the scope of powers of the Legislature under the articles adverted to here in thisjudgment, but that cannot be understood as in any way contemplating immunity from examination by courts of any act of the Legislature. In fact one of the functions of the courts is to examine the validity of legislative acts. Whether the Legislature has been functioning within the permissiblelimits of its legislative power is a matter which quite often arises for examination before courts. Even so immunity is conferred on the Legislature under Clause (1) of Article 212. The proceedings in the Legislature may not be challenged on the ground of mere irregularity but may be challenged as illegal or unconstitutional. The proceedings of the Legislature may become unconstitutional if it violates the provisions of the Constitutionand then there would be a case for examination."**

Although the above cited cases are not binding on us as they are only of persuasive value, we found them to not only be illustrative but also authoritative as the principles enshrined therein quite accurately address our own position in relation to the defence of exclusive cognisance pleaded by the Respondent in this matter.

Having found that the defence of exclusive cognisance is not available in this case, we shall proceed to determine the petition on merit.

In this regard, and as already stated above, the main question raised in this matter is whether the Ruling of the Speaker dated 27th February, 2019 is null and void *ab initio* on ground that the matter was *sub judice* and that the Speaker usurped the powers of the courts thereby breaching Articles 119 and 128 of the Constitution. In support of his position that the Speaker usurped judicial authority and that his decision was *sub judice*, the core of the Petitioner's arguments was that by so ruling, the Speaker usurped judicial authority of interpreting the Constitution as he had no power to interpret, amend or add to the provisions of the Constitution. Further, that by pronouncing himself on a matter that was pending hearing before the courts on the question whether or not the Petitioner had crossed the floor which question or issue was at the material time a subject of active litigation before the High Court, the Speaker fell foul of the *sub judice* rule.

In response, the crux of the Respondent's arguments was that the Speaker was well within his powers when he proceeded to determine a point of order raised on the floor of the House in keeping with Standing Order 52 of the **National Assembly Standing Orders, 2016**.

We have considered the above submissions. The question is: Did the Speaker, by pronouncing himself on a matter which was before the courts of law usurp the power of the courts and was his

decision *sub judice*? To ably determine the question raised above, we consider it imperative to first have a clear understanding of the terms "usurpation" and "*sub judice*".

The learned authors of **Black's Law dictionary, 8th Edition**, define the term "usurpation" as follows:-

> **"usurpation- the unlawful seizure and assumption of another's position, office or authority."**

The **Oxford Dictionary of Law, Oxford University Press, 5th Edition, 2002**, defines the "*Sub judice rule*" as follows:-

> 1. **A rule limiting comment and disclosure relating to judicial proceedings, in order not to prejudge the issue or influence the jury.**
> 2. **parliamentary practice in which the Speaker prevents any reference in questions or debates to matters pending decision in court proceedings (civil or criminal). In the case of civil proceedings, he has power to waive the rule if a matter of national interest is involved."** (Underlining ours for emphasis only).

In the current case, there is no dispute that at the time the Speaker rendered the decision in question, an appeal was pending in the court of Appeal and the Respondent's counter claim was also pending before the High Court. The Ruling of the Speaker shows that in determining the question whether or not the Petitioner had crossed the floor and in declaring the Petitioner's parliamentary seat vacant, the Speaker considered the provisions of Article 72 of the Constitution as amended and he in particular, relied on Article 72 (2) (d) and (g) to

come up to his finding that the provisions relate to a member losing his/her seat on account of crossing the floor. He went on to point out that there was a *lacuna* under Article 72 as that Article does not provide any guidance to a member who while in the House, elects to join another political party.To 'cure' the *lacuna,*the Speaker applied the purposive approach to statutory construction to construe Articles 72 (2) (d) and (g). And he came to the conclusion, *inter alia,* that a Member of the National Assembly shall vacate his or her seat if a member becomes a member of a political party other than the party on whose ticket he was elected to the National Assembly. And that, since the Petitioner was elected to the House on the ticket of the Patriotic Front Party, he crossed the floor and vacated his seat by becoming an office bearer and, consequently, a member of the NDC party by virtue of assuming the position of Consultant of the NDC.

Our firm view is that while the Speaker was well within his power to respond to the point of order that was raised on the floor of the House, he exceeded his powers when he proceeded to apply the purposive canon of interpretation of statutes in order to 'cure' the *lacuna* that he identified in Article 72 of the Constitution as amended. We find that the Speaker exceeded his power as the function of interpreting the law and the Constitution is vested in the Judiciary as provided by Article 119 of the Constitution. The interpretation of the Constitution as a legal instrument is the function of the Courts, the

branch of Government to whom is assigned that delicate task. Therefore, by ruling as he did, the Speaker exceeded his constitutional power as he strayed or encroached into the adjudicative function of the courts of the land which are mandated to exercise judicial authority of the Republic by interpreting the law and the Constitution. Therefore, the provisions of Article 77(1) of the Constitution as amended and Section 34 of the **National Assembly (Powers and Privileges) Act** cannot be relied upon as a defence. More so that according to the Respondent's submissions, the Speaker was aware of the court case(s) although not the details.

As regards the contention that the Speaker breached the Constitution on ground that he went on to decide on a matter that was already before the courts of the land and therefore *sub judice*,having given the definition of the *sub judice* rule above, we totally agree with the definition of *sub judice* as given by the learned authors of **TheOxford Dictionary of Law** quoted above. We also agree that in case of civil proceedings, the Speaker does indeed have power to waive the *sub judice* rule in very limited cases. The qualification in the said definition is that the Speaker can only waive this rule if a matter of national interest is involved.

We have agonisingly perused the Ruling and indeed the submissions by the Respondent. Nowhere has it been stated or

argued that the Speaker dealt with this issue as a matter involving national interest. We of course agree that, this issue was raised from the floor of the House, but nevertheless, since the same issue was already pending determination in the courts of law, the Speaker, by proceeding as he did, fell foul of the *sub judice* rule. Consequently, the concern of prejudice arising is valid. This concern is fortified by the fact that the decision effectively shut out the remedies the Petitioner could have accessed under Article 72 (5), (6) and (7) of the Constitution as amended on the applicable procedure where a Member of Parliament contests his expulsion from the party that sponsored his candidature.

Having found that the Speaker did exceed his powers, the question is: Is the Petitioner entitled to the first prayer in the petition where under he seeks adeclaration and order that the Ruling of the Speaker dated 27th February, 2019 is null and void *ab initio* and consequently that it must be set aside?

Black's Law Dictionary, 8th Edition, at page 859,definesa "*declaratory judgment*" is defined as follows:

> **"A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement."**

There is also sufficient authority in Zambian case law on the nature of declaratory judgments or orders. In **Communications**

Authority v Vodacom Zambia Limited[11] the Supreme Court aptly put it *inter alia*, thus:

> **"A declaration is a discretionary remedy. A party is not entitled to it as of right. Of course the discretion must be judiciously exercised. The Court:-**
>
> **(a) Will not pass a declaration judgment casually, lightly or easily. The remedy should be granted for good cause, on proper principles and considerations. It must be made sparingly; with care and utmost caution. It is a remedy which Courts discourage, except in very clear cases.**
>
> **(b) Will not grant a declaration when no useful purposes can be served or when an obvious alternative and adequate remedy, such as damages, is available.**
>
> **(c) and Will not grant a declaration unless all the parties affected by, interested in it are before the Court."**

We totally agree with the above principles and guidance as to what a court should take into account when considering whether or not to grant a declaratory remedy. We adopt the words of the Supreme Court as our own.

The question, therefore, is whether in the circumstances of this case, the first declaratory remedy as prayed by the Petitioner is available. In other words, what would be the effect of granting such an order? We have stated above that a declaratory remedy is a discretionary remedy and that the discretion must be exercised judiciously and for good and compelling reasons. It is not a matter of right even where a party has shown that there was some wrongdoing.

The circumstances of this case, as outlined above are that following the point of order and the ruling of the Speaker which declared the Petitioner's seat vacant, a by-election for the Constituency in question was held on 11th April, 2019 and one Joseph Chisala, of the NDC party emerged winner and has since taken up the Roan parliamentary seat in the National Assembly. It is also in the public domain that the Petitioner in this matter took charge and fully campaigned for Joseph Chisala. However, in his petition against the Respondent, the Petitioner has not cited the said Joseph Chisala thereby making his prayer for a declaratory order to fall foul of the principle that the court will not grant a declaration unless all the parties affected by or interested in the case are before court. Mr. Joseph Chisala is not a party but he is an interested person and he has not been heard. The effect of granting such a declaration would have the effect of nullifying his election as current Member of Parliament as there cannot be two Members of Parliament for the same Constituency under the law. As such, granting such a declaration would not serve any useful purpose as the seat has been taken by another person.

We also do see the mischief that would result if the declaration sought by the Petitioner in his first prayer was granted. The Solicitor General in his submission put it aptly, and we agree, that granting the Petitioner the relief sought would not only lead to a constitutional crisis

but it would also lead to an absurd state of affairs as it would result in the Petitioner returning to the National Assembly as Roan Member of Parliament when there is already a serving Member of Parliament for the same constituency thereby having two parliamentarians for the same constituency as already stated above. This would be contrary to Article 68 of the Constitution which stipulates the number of Members of Parliament. Therefore, the Petitioner's first prayer is declined.

As regards the Petitioner's second and third prayers, for declarations and orders that the Petitioner did not cross the floor and that the Petitioner's seat did not fall vacant, our firm view is that this Court does not have jurisdiction to delve into the issues whether or not the Petitioner did indeed cross the floor or whether indeed his seat fell vacant or not because these are matters which at the material time were pending determination by the High Court under whose jurisdiction they fall. We do not thus want to fall into the same trap of usurping the powers of the High Court which was dealing with the matter in question.

Further, considering and determining the issues raised under the two reliefs sought would amount to this Court acting as if it were an appellate Court from the Ruling of the Speaker when in fact it is not. Consequently, the reliefs sought under the second and third prayers are not available to the Petitioner.

All in all, this petition has failed and is dismissed.

Since this matter raised serious constitutional issues, we order each party to bear their own costs.

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H. Chibomba
PRESIDENT
CONSTITUTIONAL COURT

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A. M. Sitali
CONSTITUTIONAL COURT JUDGE

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M. S. Mulenga
CONSTITUTIONAL COURT JUDGE

.....

P. Mulonda
CONSTITUTIONAL COURT JUDGE

.....

M. Musaluke
CONSTITUTIONAL COURT JUDGE