

IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY

2019/CCZ/0013
2019/CCZ/0014

HOLDEN AT LUSAKA

(CONSTITUTIONAL JURISDICTION)

BETWEEN:

LAW ASSOCIATION OF ZAMBIA
CHAPTER ONE FOUNDATION LIMITED

1ST PETITIONER
2ND PETITIONER



AND

THE ATTORNEY GENERAL

RESPONDENT

CORAM: Chibomba, PC, Sitali, Mulenga, Mulembe, Mulonda, Munalula and Musaluke, JCC.

On 25th November, 2019 and on 29th November, 2019.

For the 1st Petitioner: Mr. J. Chimankhata and Mr. L. Mwamba both of Simeza Sangwa and Associates.

For the 2nd Petitioner: Ms. L. C. Kasonde and Mr. J. Kalala both of L. C. K. Chambers.

For the Respondent: Mr. L. Kalaluka, S.C., Attorney General, Mr. A. Mwansa, S.C., Solicitor General, Mr. F. K. Mwale, Principal State Advocate, Mr. S. Mujuda, Principal State Advocate, Ms. J. Mazulanyika, Assistant Senior State Advocate, Mr. J. Sianyabo, State Advocate, Ms. N. K Chongo, State Advocate.

ABRIDGED JUDGMENT

Chibomba, PC, delivered the judgment of the Court.

Due the urgency of this matter, this is an abridged Judgment. The detailed Judgment will come in due course.

By Petition filed on 12th August, 2019, under Cause No. 2019/CCZ/0013, the 1st Petitioner, the Law Association of Zambia (LAZ)

prays for the following reliefs from the Respondent, the Attorney General of the Republic of Zambia:-

- “(a) a declaration that the Respondents’ decision to the extent to which it seeks to amend the Constitution in the manner set in the Constitution of Zambia (Amendment) Bill No. 10 of 2019, is illegal because it contravenes Articles 1(2), 8, 9, 61, 90, 91, 92 and 79 of the Constitution;**
- (b) an order (of Certiorari) that that this Petition be allowed and that the Constitution of Zambia (Amendment) Bill No. 10 of 2019, which evidences the Respondents’ decision to amend the Constitution in the manner provided therein be removed forthwith into the Constitutional Court for purposes of quashing;**
- (c) Any other remedy the Court may consider just in order to defend the Constitution and resist or prevent its overthrow, suspension or illegal abrogation; and**
- (d) The costs of and occasioned by the Petition be borne by the Respondents.”**

The Petition was filed pursuant to Articles 128 (3), 1(2), 8, 9, 61,90, 91, 92 (2) (1), 177 (5) (B) and 79 (2) of the Constitution (Amendment) Act No. 2 of 2016 and Section 8 (3) of the Constitutional Court Act and Order 4 (1) of the Constitutional Court Rules, 2016. The Petition was filed together with an Affidavit Verifying the Petition and skeleton arguments and a witness statement.

In opposing the 1st Petitioner’s Petition, the Respondent, on 8th October, 2019 filed an Answer and affidavit in opposition and skeleton arguments.

On 4th September, 2019, the 2nd Petitioner, Chapter One Foundation Limited, filed an amended Petition under Cause No. 2019/CCZ/0014 in which it is claiming the following reliefs against the same Respondent, the Attorney General:-

- “1. The Court makes a declaration that all institutions that are involved in the process of enacting legislation including National Assembly and Parliament are bound by the Constitution to apply the National Values and Principles in the enactment process;**
- 2. The court makes declaration that Parliament cannot enact legislation that contravenes Article 61 of the Constitution or Articles 8 and 9 of the Constitution and therefore can only enact legislation that protects the Constitution and promote democratic governance in Zambia;**
- 3. The decisions, omissions and the actions by the Government of the Republic of Zambia in drafting and tabling the Constitution of Zambia (amended) Bill No. 10 of 2019 which weakens the Constitution and does not promote democratic governance in Zambia be declared unconstitutional and contrary to the provisions of Article 61 of the Zambian Constitution and therefore illegal;**
- 4. That the court make a declaration that the President, Minister of Justice and Attorney General acted illegally by initiating legislation that did not comply with the National Values and Principles as provided in the Constitution of Zambia;**
- 5. That the court order that the Minister of Justice to withdraw from the National Assembly the Constitution of Zambia (Amended) Bill No. 10 of 2019 from the National Assembly as the process of its enactment and the proposals contained within it do not comply with the National Values and Principles and the provisions of the Constitution of Zambia;**
- 6. That the court make a declaratory order that the Government of Zambia cannot propose or enact legislation including propose the enactment or amend the Constitution of Zambia in a manner that contravenes the National Values and Principles as set out in the Constitution of Zambia;**
- 7. That the court make a declaratory order that the National Assembly of Zambia cannot exercise legislative authority in manner that does not protect the Constitution or promote democratic governance in the Republic of Zambia;**

8. **The court make a declaration that Article 79(1) of the Constitution must be interpreted in a manner that is consistent with the entire Constitution;**
9. **The court make declaratory order that the Government of Zambia cannot fundamentally alter the nature of the Constitution contrary to the will expressed by the people of Zambia without duly consulting the people of Zambia; and**
10. **An Order that costs of and occasioned by the Petition be borne by the parties.”**

The Petition was filed pursuant to Articles 128 (1) (b), 128 (3) (b), 1(3), 8 (c), 8 (e), 9, 61 79 and 287 of the Constitution (Amendment) Act No. 2 of 2016. The Petition was also filed together with the Affidavit Verifying the Petition and skeleton arguments.

The Respondent, on 17th October, 2019, filed an answer and affidavit in opposition and Skeleton arguments.

On 4th October, 2019, the parties filed a consent order consolidating the two Petitions so that they could be heard at the same time. The Law Association of Zambia was to be the 1st Petitioner while the Chapter One Foundation Limited is the 2nd Petitioner.

The historical background of this matter, which was common cause to the parties in the Petition, is that following the amendment of the Constitution of Zambia by Constitution (Amendment) Act No. 2. of 2016 which came into force on 5th January, 2016, it was observed that there were some lacunae which required to be addressed. The Ministry of Justice invited members of the public, associations and institutions to make submissions by identifying provisions that required refinement.

