

**GODFREY KENNETH MIYANDA, ANDERSON MAZOKA KAMBELA
CHRISTON TEMBO, NEVERS MUMBA TILYENJI KAUNDA AND BEN MWILA
v THE ATTORNEY-GENERAL The Electoral Commission of Zambia and
The Returning Officer for the Presidential Elections**

High Court
Justice P. Chitengi
2nd January, 2002

Flynote

*Constitutional Law- Supremacy of – Courts power – Effect on.
Elections – Returning Officer – Declaration of winner – whether mandatory after
receipt of results.*

Headnote

The appellants who individually sought the Presidency of the Republic of Zambia in the 2001 Presidential Parliamentary and Local Government Elections, had various complaints and concerns about the election in some Constituencies. The applicants mainly complained that the Returning Officer ignored the requests to order a recount and verification of the Presidential polls under Regulation 44 of the Electoral (General) Regulations. The applicants argued that in terms of regulation 46 aforesaid they were also entitled to recount as long as the request is not unreasonable.

Held:

- (i) The Returning Officer has no discretion in Presidential Elections. Once the result of the Presidential Poll is communicated to him, the Returning Officer has under the Constitution no choice but to declare the winner and swear him in as the president.
- (ii) The Constitution is the Supreme law from which all other laws trace their validity and no Acts of Parliament, by laws or rules of court, will be given interpretation which will conflict with the Constitution itself.

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