IN THE CONSTITUTIONAL COURT **2021/CCZ/0011**
HOLDEN AT LUSAKA **2021/CCZ/0014**
(CONSTITUTIONAL JURISDICTION)

BETWEEN:

BAMPI AUBREY KAPALASA **1ST APPLICANT**
JOSEPH BUSENGA **2ND APPLICANT**

AND

THE ATTORNEY GENERAL **RESPONDENT**

CORAM: **Chibomba, PC, Sitali, Mulenga, Mulonda, Munalula, Musaluke, Mulongoti, JJC**

On 5th May, 2021 and 18th May, 2021

For the 1st Applicant	:	**In Person**
For the 2nd Applicant	:	**In Person**
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. C. Mulonda, Principal State Advocate
		Ms. K. Mumba, Assistant Senior State Advocate
		Ms. K. Mofya, Assistant Senior State Advocate
		Mr. P. Phiri, State Advocate

R U L I N G

Mulenga, JC delivered the Ruling of the Court

Cited cases:

1. **Dr. Daniel Pule, Wright Musoma, Pastor Peter Chanda and Robert Mwanza v. The Attorney General, Davies Mwila (in his capacity as Secretary General of the Patriotic Front), The Law Association of Zambia and Steven Katuka (in his capacity as Secretary General of the United Party for National Development) CCZ Selected Judgment No. 60 of 2018 (unreported).**
2. **Hussein Safieddinne v. The Commissioner of Lands and Others SCZ Selected Judgment No. 36 of 2017.**
3. **Nana Ofori Atta II v. Nana Abu Bonsra II [1958] A.C. 95.**
4. **Wytcherley v. Andrews (1871) L. R. 2 P. & D. 327.**
5. **Gleeson v. J. Wippell and Co. (1977) I WLR 510.**
6. **Kirin-Amgen v. Boehringer Mannheim GmbH [1997] FSR 289 (CA).**
7. **Zambia Privatization Agency v. Huddell Chisenga Chibambo and ZamCargo Zambia Limited (2005) ZR 74.**
8. **Stephenson v Garrett [1898] 1 Q.B. 677 CA**

Legislation referred to:

1. **The Constitution of Zambia (Amendment) Act No.2 of 2016.**
2. **The Constitution of Zambia Act 1991 as amended by the Constitution of Zambia (Amendment) Act No. 18 of 1996.**
3. **The Constitutional Court Rules, Statutory Instrument No. 37 of 2016.**

Other Materials referred to:

1. **The Rules of the Supreme Court of England, 1999 Edition (White Book)**
2. **Strouds Judicial Dictionary of Words and Phrases Volume3, Seventh Edition, London, Thomson; Sweet and Maxwell, 2006**

1. Introduction

1.1 This Ruling is on the Respondent's motion to raise preliminary issues pursuant to Order 14A and Order 33 rule 3 of the Rules of the Supreme Court, 1999 Edition,

(White Book) as read together with Order 1 of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016.

1.2 After hearing the Respondent's motion on 5th May, 2021 we dismissed the 1st Applicant's Originating Summons in its entirety and the 2nd Applicant's originating summons in relation to the interpretation of Article 106 of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (The Constitution). We further stated that we would give reasons in a Ruling to follow, which we now do.

1.3 The Respondent raised two preliminary issues as follows:

1. Whether the interpretation of Article 106 (1), (3) and (6) (a) and (b) of the Constitution being sought in the current Originating Summonses are *res judicata* on account of the Judgement of this Court in the case of **Dr. Daniel Pule, Wright Musoma, Pastor Peter Chanda and Robert Mwanza v The Attorney General, Davies Mwila (in his capacity as Secretary General of the Patriotic Front), The Law Association of Zambia and Steven Katuka (in his capacity as Secretary General of the United Party for National Development)**[1] and therefore should be dismissed with costs.
2. Whether this Court was wanting in jurisdiction as it was *functus officio* having pronounced itself on the subject of

the litigation herein in the case of **Dr. Daniel Pule and 3 Others v Attorney General and 3 Others**[1].

1.4 In the affidavit in support of the motion, the Learned Attorney General, Mr. Kalaluka, State Counsel, averred that it was his belief that the interpretation of Article 106 (1), (3) and (6) (a) and (b) of the Constitution in so far as it relates to the eligibility of President Edgar Chagwa Lungu to stand as presidential candidate during the 2021 general elections, being sought by the Applicants herein, had already been adjudicated upon by this Court in the case of **Dr. Daniel Pule and 3 Others v The Attorney General and 3 Others**[1].

2. Background

2.1 The background giving rise to this motion is that the 1st Applicant in his Amended Originating Summons under cause No. 2021/CCZ/0011 filed on 21st April, 2021 was seeking the following main relief:

That this Court interprets Article 106 (1), (3) and (6) (a) and (b) of the Constitution as amended to clarify whether or not the current sitting Republican President, His Excellency Edgar Chagwa Lungu or any person in his situation and position who was first elected in a by-election or any general election is still eligible to run as a presidential candidate for the Republic of Zambia, for the third time, in the 2021 General Election or any election thereafter.

2.2 Equally, the 2nd Applicant, by Originating Summons filed on 21stApril, 2021 in cause No. 2021/CCZ/0014, first

sought the interpretation of Article 106 of the Constitution as follows:

i. **What is meant by the expression "A Person who has twice held office as President" within the context in which it is used in Article 106 (3) of the Constitution;**

ii. **Whether or not a person who has been elected, sworn in or has exercised the functions of the office of President more than once may be deemed to have "twice held office" within the context of Article 106 (3) of the Constitution regardless of the duration of the time which that person served in the office on each occasion or whether one can be elected to hold office a third time;**

iii. **Whether, having regard to the Judgment in the case of *Dr. Daniel Pule and 3 Others v The Attorney General and 3 Others*[1] a person who has held a term of office that cannot be considered a full term within the meaning ascribed to that expression in the said Judgment must, conversely be deemed not to have held office as President during such a term;**

iv. **Whether or not the provisions of Article 106 (3) and Article 106 (6) (b) are in conflict with one another and, if so, which of the two articles ought to take precedence over the other and whether or not the provisions of Article 106 (6) (b) ought therefore to be struck down for being in conflict with the expressed will of the people of Zambia not to allow any person to hold office as President and/or be elected as such more than twice.**

Secondly, in respect of Article 70 of the Constitution the 2nd Applicant sought an interpretation regarding:

Whether or not a person who is serving a suspended sentence is disqualified from being elected as a Member of Parliament in terms of the provisions of Article 70 (2) (f) of the Constitution.

2.3 At the hearing of this motion, the Respondent relied on the affidavit and skeleton arguments in support of the motion and reiterated that the issues in the Originating Summons were settled in the case of **Dr. Daniel Pule and 3 Others v The Attorney General and 3 Others**[1]. The 1st Applicant equally relied on his Originating Summons and affidavit in support. The 2nd Applicant withdrew or abandoned his objection that was outlined in his affidavit in opposition to the motion and the attendant skeleton arguments filed on 29th April, 2021 and left the determination of the matter to the Court.

3. The Respondent's Motion and Arguments

3.1 The Respondent's motion was made pursuant to Order 14A and Order 33 rule 3 of the White Book, as above stated.

3.2 In the skeleton arguments in support of the motion, the Respondent argued that the Applicants' action should be dismissed for being *res judicata*. The Supreme Court's decision in the case of **Hussein Safieddinne v The Commissioner of Lands and Others**[2] was cited in support wherein *res judicata* was defined as:

> **An issue that has been definitely settled by Judicial decision (Judgment). An affirmation defence barring the same parties from litigating a second law suit on the same claim, or any**

other claim arising from the same transaction or series of transactions and that could have been – but was not raised in the first suit. The three essential elements are –

1. **An earlier decision on the issue.**
2. **A final Judgment on the issue**
3. **The involvement of the same parties or parties in privity with the original parties". (emphasis theirs)**

3.3 With regard to the element of "the involvement of the same parties or parties in privity with the original parties" the case of **Gleeson v J. Wippell and Company**[3] was cited wherein Megary J, held at page 515 that:

The requisite privity is said to be a privity either of blood, of title or of interest .....

3.4 The Respondent also relied on the United Kingdom Court of Appeal's decision in the case of **Kirin-Amgen v Boehringer Mannheim GmbH**[4] wherein it was held that:

It is not possible to have in mind all the circumstances where privity of interest may arise and therefore it would not be right to try to formulate a definition. Each case has to be decided in light of its particular facts. However, it will only be where the person sought to be estopped has the same interest or an interest which has a sufficient degree of identification with that interest, so as to require that the decision should bind the other party in the second action, that the court will hold that there is privity of interest.

3.5 It was the Respondent's contention that this Court in the **Dr. Daniel Pule**[1] case allowed applications for joinder by Stephen Katuka (in his capacity as Secretary General of the United Party for National Development) (UPND) and

the Law Association of Zambia (LAZ) on the basis that they were properly interested parties with each party serving the interest of its members and the public, respectively.

3.6 Accordingly, that the Applicants in this case are privies of the original parties in the earlier decision in the **Dr. Daniel Pule**[1] case. That this conclusion is fortified by what was held in the cases of **Gleeson v J. Wippell and Company**[3] and **Kirin – Amgen v Boehringer Nannheim GmbH**[4] which decided that privity, in the context of *res judicata* or issue preclusion, extended to privity of interest. It was posited that based on the fact that the 1st Applicant is a politician and a member of the United Party for National Development (UPND), his current interests are identical to the interests, of the Secretary General of the United Party for National Development (UPND) who represented their members and politicians in the **Dr. Daniel Pule**[1] case.

3.7 It was the Respondent's further contention that both Applicants are members of the public whose interests were clearly recognized by this Court in the **Dr. Daniel Pule**[1] case when the Court joined the Law Association of Zambia (LAZ) to the proceedings. Therefore, that the Applicants qualify as privies of the original parties in the earlier **Dr Daniel Pule**[1] case.

3.8 The Respondent further cited **Stroud's Judicial Dictionary of Words and Phrases Volume 3, Seventh Edition** which states at page 2379 as follows:

> **The phrase *res judicata* is used to include two separate state of things. One is where a judgment has been pronounced between parties and findings of fact are involved as a basis of that judgment. All the parties affected by the judgment are then precluded from disputing those facts, as facts in any subsequent litigation between them. The other aspect of the term arises when a party seeks to set up facts, which if they had been set up in the first suit, would or might have affected the decision.**

3.9 It was the Respondent's submission that the interpretation of Article 106 (1), (3) and (6) (a) and (b) being sought by the Applicants had already been adjudicated upon in the **Dr. Daniel Pule**[1] case in which this Court was called upon to interpret among other articles, Article 106 (1), (3) and (6) of the Constitution. The Respondent proceeded to quote sections of the Judgment as regards Article 106 and the term of office for President Edgar Chagwa Lungu that ran from 25th January, 2015 to 13th September, 2016 and straddled two constitutional dispensations which this Court held not to be a full term for purposes of Article 106 (3) based on the provisions of Article 106 (1), (3) and (6) of the Constitution. We have not reproduced the quoted sections here for the sake of

brevity and the fact that we will refer to them later in this Ruling.

3.10 The Respondent contended that the interpretation of the Constitution, as is the case herein, is not targeted at an individual but has a universal application in line with what we stated in the **Dr. Daniel Pule**[1] case where we said:

> **Before we proceed to consider the question posed above, we note that although the Applicants argued in their submission that this matter has been brought pursuant to Article 128 (1) (a), which grants this Court jurisdiction to interpret constitutional provisions, the manner the above question has been couched personalizes the issue in that it targets the incumbent President as an individual. We do not encourage this trend because the framing of the questions for this Court's interpretation of constitutional provisions should not target any individual as it is meant for general application as the interpretation is binding on every person in the Republic. What we are dealing with in the current case is the office of President.**

3.11 The Privy Council's decision in the case of **Nana Ofori Atta II v Nana Abu Bonsra II**[5] was relied on wherein Lord Denning, on the issue of privity, stated at pages 102 – 103 as follows:

> **In order to determine this question the West African Court of Appeal quoted from a principle stated by Lord Penzance in *Wytcherley v Andrews (1871) L. R. 2 P. & D. 327, 328.* The full passage is in these words: "There is a practice in this Court, by which any person having an interest may make himself a party to the suit by intervening; and it was because of the existence**

of that practice that the judges of the Prerogative Court held, that if a person, knowing what was passing, was content to stand by and see his battle fought by somebody else in the same interest, he should be bound by the result, and not be allowed to re-open the case, that principle is founded on justice and common sense, and is acted upon in courts of equity, where, if the persons interested are too numerous to be all made parties to the suit, one or two of the class are allowed to represent them; and if it appears to the court that everything has been done bona fide in the interests of the parties seeking to disturb the arrangement, it will not allow the matter to be re-opened..... [T] here is nothing in the principle itself which compels it to be limited to wills and representative actions. The principle, as Lord Penzance said, is founded on justice and common sense.

3.12 The Respondent posited that having demonstrated that the issues sought to be interpreted in this case have been adjudicated upon, this Court ought to reach the conclusion that this matter is *res judicata* and therefore an abuse of court process.

3.13 To support this position, reference was made to the explanatory notes at paragraph 18/19/19 of the White Book which gives examples of what amounts to abuse of court process. One such example is re-litigation and states that:

Even though a plea of *res judicata* might not strictly be an answer to the action; it is enough if substantially the same point has been decided in a prior proceeding.

3.14 The Respondent argued that the Court is further given power to terminate matters that would otherwise turn out to be an abuse of the process of the Court by Order 18 Rule 19 (1) (d) of the White Book which states that:

> **(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –**
>
> > **(d)It is otherwise an abuse of the process of the Court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.**

3.15 The Respondent further submitted that it is an established principle of law that the decisions of this Court are final and cannot be appealed against. Further, that it follows that issues which have already been adjudicated upon by this Court should not be re-litigated. To support this position, reference was made to the provision of Article 128 (4) of the Constitution which states that the decisions of the Constitutional Court are not appealable to the Supreme Court.

3.16 As regards the second limb, the Respondent argued that it is an established principle of law that once this Court adjudicates over a matter, it becomes *functus officio* and as a result does not have jurisdiction to re-hear and re-

determine the same issue based on Article 128 (4) of the Constitution.

3.17 Therefore, that this Court having interpreted Articles 106 (1), (3) and (6) (a) and (b) in the **Dr. Daniel Pule**[1] case, it is now wanting in jurisdiction to hear and determine the Applicants' Originating Summons. The Respondent added that this position has been re-affirmed by the courts in this jurisdiction. The Supreme Court's decision in the case of **Zambia Privatization Agency v Huddell Chisenga Chibambo and Zam Cargo Zambia Limited**[6] was cited as an example.

4. The Applicants' Position

4.1 The 1st Applicant relied on his amended affidavit in support of the originating summons in which he stated that he was aggrieved by the fact that the Constitution was not clear as to whether or not the current sitting Republican President or any person in his situation and position who was first elected in a by-election or any election which is not a general election is still eligible to run as a Presidential candidate for the third time, in the 2021 general elections.

4.2 He added that President Edgar Chagwa Lungu was first sworn in to the office of President on 25th January, 2015

and later ran for re-election in the general election of 16th August, 2016 and won for the second time.

4.3 Furthermore, that the Constitution (as amended by Act No. 18 of 1996) which regulated the first presidency had clearly limited, without exceptions, the terms of an elected president to two terms as per repealed Article 35 (2).

4.4 It was the 1st Applicant's further contention that the transition from the 1991 Constitution as amended by Act No 18 of 1996 to the Constitution as amended by Act No 2 of 2016 left uncertainties and legal lacunae as to whether the current sitting Republican President's terms of office had to be computed in terms of the repealed Article 35 (2) under which he was elected and which limited him to hold two terms without any exception. The 1st Applicant added that the Constitution in Article 106 (3) and (6) (b) also limits the terms of the Presidency of the Republic to two but gives an exception where a period in office of less than 3 years is deemed not to be a full term. Thus, that he was seeking this Court's interpretation of Article 106 (1), (3) and (6) (a) and (b) of of the Constitution as to whether the current Republican President, Dr. Edgar Chagwa Lungu, was eligible to run for a third term.

4.5 At the hearing of the matter the 2nd Applicant opted to withdraw his affidavit and skeleton arguments in opposition to the motion.

5. Decision

5.1 We have considered the motion raised by the Respondent and the arguments of the parties on both sides. The main issue for our consideration is whether the 1st and 2nd Applicants' respective Originating Summons which seek an interpretation of Article 106 (3) and (6) of the Constitution constituted an abuse of court process for re-litigation of the issues already determined in the case of **Dr. Daniel Pule and 3 Others v The Attorney General and 3 Others**[1].

5.2 The Respondent brought this motion pursuant to Order 14A and Order 33 rule 3 of the White Book. Order 14A rule 1 (1) and (2) of the White Book state that:

> **(1)The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:**
>
> **(a) Such question is suitable for determination without a full trial of the action, and**
>
> **(b) Such determination will finally determine the entire cause or matter or any claim or issue therein.**
>
> **(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks fit.**

5.3 This Order empowers a court to determine any question of law or construction of any document in any cause or matter whose determination will finally determine the entire cause or matter. A court may either dismiss the matter or give such orders as the court considers just.

5.4 The provisions of Order 33 Rule 3 of the White Book equally relate to the trial of questions, whether of fact or law, raised either before or at the trial of a matter and reads as follows:

> **3.The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.**

5.5 The Respondent raised the preliminary issues based on the grounds of *res judicata* and *functus officio*. However, in the skeleton arguments, the issues were anchored on abuse of court process under Order 18 rule 19 of the White Book, and correctly so in our view.

5.6 What amounts to abuse of process is wide as can be seen from the examples highlighted in the explanatory notes at paragraphs 18/19/18 and 18/19/19 of the White Book. This includes re-litigation of an issue that has already been finally determined by the Court. It also covers a

situation where an identical question that has already been determined in an earlier action is raised, as happened in this case. This may apply even when a plea of *res judicata* may not strictly be applied as was held in the case of **Stephenson v Garrett**[8].

5.7 Where there appears to be an abuse of the process of the court, Order 18 rule 19 (1) (d) of the White Book provides that a court can dismiss an action on the ground of abuse of court process. In addition to what is provided for in Order 18 rule 19 of the White Book, courts have broad inherent power to deal with and dismiss actions on account of abuse of process. This is succinctly stated in the explanatory notes at paragraph 18/19/15 of the White Book as follows:

> **Para. (1)(d) confers upon the Court in express terms powers which the Court has hitherto exercised under its inherent jurisdiction where there appeared to be "an abuse of the process of the Court." This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.**

5.8 The underlying principle is that the process of the court must be used bonafide and must not be abused. In determining whether there is abuse of court process, the

court must take into account all the circumstances of a particular case.

5.9 It is a duty of, and indeed it is incumbent upon, the Court to curb abuse of its process. The abuse must be nipped in the bud and dealt with at the earliest opportunity to safeguard the scarce judicial resources which should be expended on deserving cases.

5.10 Although the Respondent raised the issue of *res judicata* in its motion, we are of the considered view that this matter is in fact an abuse of the process of this Court. This is due to the fact that the Applicants essentially seek this Court's interpretation of Article 106 (1), (3) and (6) regarding what they allegedly term as a 'third term' in relation to President Edgar Chagwa Lungu, which provisions were the subject of interpretation in the **Dr. Daniel Pule**[1] case. In the **Dr. Daniel Pule**[1] case, this Court holistically considered the provisions of Article 106 and in particular, clauses (1), (3) and (6) (a) and (b) of that Article as regards the tenure of office of President and what constitutes a term. The history or evolution of the constitutional provisions on this subject was also extensively considered as well as the fact that sub articles (1), (3) and (6) of Article 106 are not contradictory.

5.11 It is therefore inconceivable that the Applicants could not comprehend what we stated in clear terms in the **Dr. Daniel Pule**[1] case that the term that spanned a period from 25th January, 2015 to 13th September, 2016 did not constitute a term for the purposes of Article 106 (3) as read with Article 106 (1) and (6) (b). For avoidance of doubt, we wish to quote what we stated on pages J77 to J83 of the Judgment in the case of **Dr. Daniel Pule and 3 Others v The Attorney General and 3 Others**[1] on this aspect as follows:

> **Previously the limitation in eligibility for election to the office of President, as provided in the repealed Article 35 (2), was premised on the fact that a person had been elected twice as President regardless of the period the person served as President, even when the person was required only to serve the remainder of the term of his or her predecessor.**
>
> **Under the current Constitutional regime, however, the holding of office as President is attached to the term of office as defined in Article 106 (1) and (6) read together. While Article 106 (1) provides that the Presidential term of office is 5 years, Article 106 (6) defines what constitutes a full term. Any period of 3 years and above is a full term. A period less than 3 years is not a full term.**
>
> **Article 106 (6) thus presents a novel situation, providing that a person will be deemed not to have served a full term of office as President if at the time he or she assumes office, less than 3 years remain before the date of the next general elections. The intention of the Legislature as shown from the import of Article 106 is that a person can serve only two five year terms**

amounting to 10 years. However, with the enactment of Article 106 (6) two other scenarios now obtain. Under Article 106 (6) (a), it is possible that a person can serve for a period of less than 10 years, being one term of at least 3 years and another term of 5 years and these will count as two full terms. The converse is also true under Article 106 (6) (b) where it is now possible for one to occupy the office of President for a period which is less than a full term in addition to two full terms of office. Meaning that a President can be in the office for a total of almost 13 years. We have decided to add this for clarity.

Therefore, it is clear from the above provisions that when the Constitution is read holistically, we believe, the intention of the Legislature was that when a person takes over the unexpired term of a previous President, that person should be able to serve a substantial part of the unexpired term in order for such a term to be considered as a full term....

Section 7 (1) of the Constitution of Zambia (Amendment) Act No. 1 of 2016 provides as follows: -

> **". (1) The President shall continue to serve as President for the unexpired term of that office as specified by the Constitution in accordance with the Constitution."**

The above provision clearly shows that although the Constitution of Zambia (Amendment) Act No. 1 of 2016 provided for the continuation of the President in the office of President, it made no provisions for how the period served from January, 2015 to September, 2016 which straddled two constitutional regimes was to be treated in view of the change in the constitutional provisions from the limitation based on being 'twice elected' to holding office' for two terms. In this regard, we agree with Counsel for the Applicants that the Legislature did not address that aspect in the transitional provisions. The question, therefore, is: Was it the intention of

the framers of the Constitution to not provide for transitional provisions relating to this term?...

The foregoing shows that where it is determined that an Act failed to include express transitional provisions, it is for the Court to draw an inference or to attempt to discern what the Legislature must have intended. The Supreme Court applied this approach in the cases of *Lumina and Mwiinga v The Attorney General* and *Attorney General and the Movement for Multi Party Democracy v Lewanika and 4 Others* where the respective transitional provisions did not expressly provide for the Members of Parliament who crossed the floor. In the *Lewanika* case, the Supreme Court put it as follows:

> **"It follows, therefore, that whenever the strict interpretation of a statute gives rise to an unreasonable and unjust situation, it is our view that judges can and should use their good common sense to remedy it – that is by reading words in if necessary – so as to do what parliament would have done had they had the situation in mind."**

Therefore, the question is: what could have been the intention of the Legislature on this aspect in relation to the transitional arrangements for a presidential term straddling two constitutional regimes?

Our firm view is that it could not have been the intention of the Legislature to not provide for the period that was served and that straddled two constitutional regimes as to how it should be treated. This is so because, as stated above, a holistic consideration of the relevant provisions in this case will clearly show that the intention was/is to allow or enable a person who assumes the office of president to complete the unexpired period of the term of another president to serve a substantial part of the five-year term of office in order for that term to

count as a full term pursuant to Article 106 (6) of the Constitution as amended.

It follows that the sub-articles in Article 106 cannot be isolated from each other in interpreting the article. As we have already stated above, an interpretation of a constitutional provision that isolates the provisions touching on the same subject is faulty. Therefore, to state that Article 106 (3) applies to the term that straddled two constitutional regimes but that Article 106 (6) does not, is to isolate Article 106 (3) from the rest of the provisions in Article 106 which is untenable at law, and is at variance with the tenets of constitutional interpretation, as all the provisions on the tenure of office of the President must be read together. We are of the considered view that the provision regarding the full term must be applied to defining what is meant by twice held office under Article 106 (3) in interpreting the provisions of that Article.

It therefore, follows that in the current case, the term served which sits astride the pre and post 2016 constitutional amendments and having looked at the intention of the Legislature as we have done, and the holistic approach we have taken in interpreting Article 106 of the Constitution in its entirety, our answer to the question that we have rephrased is that the Presidential term of office that ran from 25th January, 2015 to 13th September, 2016 and straddled two constitutional regimes cannot be considered as a full term.(underlining ours)

5.12 This lengthy reproduction of portions of our Judgment in the case of **Dr. Daniel Pule**[1] attests to the fact that the issues which the Applicants seek to be interpreted regarding Article 106 were conclusively determined in the earlier case as far back as 2018. It was conclusively determined that the presidential term that spanned a period from

25th January, 2015 to 13th September, 2016 did not constitute a term for purposes of Article 106 (3) as read together with Article 106 (6) of the Constitution. It follows that the same cannot be counted as a term for purposes of Article 106 (3) of the Constitution.

5.13 We wish to emphasise that this Court is the final arbiter in matters to do with the interpretation of the constitutional provisions as provided in Article 128 of the Constitution regarding the Court's jurisdiction. Once the Court exercises its mandate in interpreting constitutional provisions as it did in the **Dr. Daniel Pule**[1] case, that settles the law. It is therefore not open for parties who have contrary personal opinions to seek to re-litigate a settled issue in order to get their desired outcome or a different outcome. This is what is manifest in this case and such conduct must be strongly discouraged.

5.14 We wish to emphasise that parties should desist from such conduct which is an abuse of court process. Once a matter, or as in this case the interpretation of a constitutional provision is settled, this Court frowns upon parties bringing the same issue for interpretation or re-litigating the issue. Whether or not a party has its own grievance or a contrary view or understanding of the constitutional provision in issue, what matters is this

Court's interpretation which is final and binds the parties and the public at large. The underlying public interest is that there must be finality of litigation.

5.15 We therefore uphold the Respondent's first preliminary issue on the grounds that the Originating Summons seeking the interpretation of Article 106 are an abuse of court process as stated above. The second preliminary issue on *functus officio* falls away.

6. Orders

1. The 1st Applicant's Originating Summons is dismissed in its entirety.

2. The 2nd Applicant's reliefs set out in paragraphs 1.1 to 1.7 of the Originating Summons in relation to the interpretation of Article 106 of the Constitution are dismissed.

3. For the avoidance of doubt, the only issue remaining for our determination in the 2nd Applicant's Originating Summons is the relief which seeks the interpretation of Article 70 (2) (f) of the Constitution regarding whether or not a person who is serving a suspended sentence is disqualified from being elected as a Member of Parliament and is referred to the single judge to schedule.

4. Each party will bear their own costs of this application.

H. Chibomba
PRESIDENT
CONSTITUTIONAL COURT

A. M. Sitali
JUDGE
CONSTITUTIONAL COURT

M. S. Mulenga
JUDGE
CONSTITUTIONAL COURT

P. Mulonda
JUDGE
CONSTITUTIONAL COURT

M. M. Munalula
JUDGE
CONSTITUTIONAL COURT

M. Musaluke
JUDGE
CONSTITUTIONAL COURT

J. Z. Mulongoti
JUDGE
CONSTITUTIONAL COURT