IN THE CONSTITUTIONAL COURT OF ZAMBIA **2016/CC/0034**
AT THE CONSTITUTIONAL REGISTRY
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)

IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 101,103 AND 105 OF THE CONSTITUTION OF ZAMBIA

BETWEEN:

HAKAINDE HICHILEMA **FIRST APPLICANT**

GEOFFREY BWALYA MWAMBA **SECOND APPLICANT**

AND

EDGAR CHAGWA LUNGU **FIRST RESPONDENT**

INONGE MUTUKWA WINA **SECOND RESPONDENT**

THE ATTORNEY GENERAL **THIRD RESPONDENT**

Before Mrs Justice M.S. Mulenga in Chambers on 31st October, 2016

For the Applicants	**: Mr. J. Sangwa, SC and Mr. M. Museba of Simeza Sangwa and Associates**
For the 1st and 2nd Respondents	**: Mr. J. Jalasi of Eric Silwamba, Jalasi And Linyama Legal Practitioners**
For the 3rd Respondent	**: Major C. Hara, Principal State Advocate And Mr. F.K. Mwale, Senior State Advocate, Attorney General's Chambers**

RULING

Cases cited:

1. **Hakainde Hichilema & Another v Edgar Chagwa Lungu & 3 Others Cause Number 2016/CC/31 (Unreported).**
2. **Hakainde Hichilema & Another v Edgar Chagwa Lungu & 6 Others Cause Number 2016/HP/1738 (unreported).**
3. **Hakainde Hichilema& Another v Edgar Chagwa Lungu & 6 Others Cause Number SCZ/8/273/2016 (Unreported).**

4. **Shamwana and 7 Others v The People (1985) Z.R. 41.**
5. **Manharial Hartji Patel v Surma Stationers Limited, Shashikanji Devraj Vaghela and Emmanuel Mwansa (S.C.Z. Judgment No. 12 of 2009).**
6. **Godfrey Miyanda v Attorney General (S.C.Z. Judgment No. 9 OF 2009).**

Legislation referred to:

1. **Constitution of Zambia (Amendment) Act No. 2 of 2016, Articles 98, 101, 105.**
2. **State Proceedings Act Cap 71, Section 12.**

Works referred to:

1. **Rules of the Supreme Court 1965 (White Book) RSC, 1999 Edition, Orders 2 rule 2 and 18 rule 19.**

This Ruling is on the 1st and 2nd Respondents' application,filed on 12th September, 2016, to set aside the originating process for irregularity and want of jurisdiction pursuant to Article 128 of the Constitution, Section 8 of the Constitutional Court Act No. 8 of 2016, Order 1 of the Constitutional Court Rules Statutory Instrument No. 37 of 2016 as read with Order 18 rule 19 and Order 2 rule 2 of the Rules of the Supreme Court of England, 1965 1999 Edition (RSC).

The basis for challenging the originating process are as follows:

(i) **The purported action has been wrongfully commenced by modus operandi of Originating Summons when the Applicants do not seek an interpretation of the Constitution of Zambia pursuant to the provisions of Order IV Rule 2 (2) of the Rules of the Constitutional Court and the question as framed in the said originating process is a veiled attempt to re-litigate a matter that was determined to finality by the Court contrary to the provisions of Article 128 (4) of the Constitution. In any event this Honourable Court is in an invidious position as it is a Respondent in the High Court of Judicature for Zambia in the case of HAKAINDE HICHILEMA & GEOFFREY BWALYA MWAMBA V EDGAR CHAGWA LUNGU, INONGE MUTUKWA WINA, THE ATTORNEY- GENERAL, THE CHIEF JUSTICE OF ZAMB IA, THE DEPUTY CHIEF JUSTICE OF ZAMBIA & THE CONSTITUTIONAL COURT OF ZAMBIA Cause Number 2016/HP/1738.**

(ii) **The purported action filed herein is incompetent and irregular as it does not explicitly disclose any legally tenable cause of action as against the 1st and 2nd Respondents and the Applicant's claims are spurious and contrary to the provisions of Order 18 Rule 19 of the Rules of the Supreme Court (RSC) 1999 Edition, White Book.**

(iii) **The purported action is contrary to the provisions of Order 18 Rule 19/18 of the Rules of Supreme Court (RSC) 1999 Edition, White Book and an abuse of the Court process as the Full Court determined the matter in issue which the Applicants seek interpretation as between the 1st and 2nd Applicants as Petitioners and the 1st and 2nd Respondents *etal*under cause No. 2016/CC/0031.**

(iv) **The purported action as filed by the Applicants is contrary to the provisions of Article 98 of the Constitution of Zambia as no person can institute a civil claim against the 1st Respondent until the *sine qua non* is satisfied *videlicet*; removal of the statutory immunity.**

(v) **The purported question which the Applicant seeks to be interpreted by this Honourable Court is absurd, vague, unclear, ambiguous, devoid of any discernable construction and untenable at law as it is invoking this power of the Court to answer as to whether the Vice President of the Republic of Zambia can swear in the President-Elect.**

(vi) **That the 3rd and 4th Respondents lack the requisite capacity to be sued.**

However, the sixth issue was abandoned as it was overtaken by events.

The application is supported by an affidavit deposed to by Sakwiba Sikota, SC. He states that after a perusal of the said originating process, he believes that the same is fraught with divers irregularities and is a fit and proper case for this Court to set aside originating process for irregularity and want of jurisdiction. The Applicants did not file an affidavit in opposition. Both parties filed their respective skeleton arguments in support and in opposition.

The brief background to this case is that the Applicants had filed an election petition in the matter of **Hakainde Hichilema & Another v Edgar Chagwa Lungu& 3 Others Cause Number 2016/CC/31** regarding the presidential elections. The election

petition was not heard within the 14 days prescribed by the Constitution and wasdismissed on that technicality as stated in the Court's final Ruling of 5th September, 2016. The swearing into office of the 1st and 2nd Respondents as Republican President and Vice President, respectively was done on 13th September, 2016. The Applicants then commenced the matter of **Hakainde Hichilema & Another v Edgar Chagwa Lungu& 6 Others Cause Number 2016/HP/1738** in the High Court presenting similar questions as the one before this Court. In the High Court action, this Court has been sued as one of the six (6) Respondents. An interim relief was sought to restrain the Chief Justice from swearing into office the 1st and 2nd Respondents, which relief was denied by the High Court on 8th September, 2016. The Applicants appealed to the Supreme Court on 10th September, 2016 against the High Court decision, which appeal was not successful. The Applicants also commenced this action on 7th September, 2016 and applied for the same interim relief but the said application was later discontinued on 12th September, 2016 after the Supreme Court delivered its Ruling.

The Originating Summons in this action is based on the question which is framed as follows:

> **"Whether the 1st and 2nd Respondents can be sworn into the office of President and Vice-President of the Republic of Zambia by the 2nd or 3rd Respondent in the absence of a declaration by Constitutional Court, pursuant to the provisions of Article 101(6) or 105(2) (b) of the Constitution of Zambia, that the Presidential election of 11th August 2016 was valid."**

Counsel for the 1st and 2nd Respondents in the skeleton arguments filed on 4th October, 2016 argued items 1, 3 and 5 together. It was submitted that a scrutiny of the said question

and analysis of the facts relied upon clearly reveal that the Applicants were seeking to invoke these proceedings as a calculated design to fault this Court in its final Ruling of the majority decision dated 5th September, 2016 when the Presidential Election Petition under cause no. 2016/CC/31 was dismissed. The reason for the dismissal of the Applicants' Petition was premised on the doctrine of want of prosecution and the import of the Ruling was that there was no petition before it that merited a substantive declaration in the absence of a hearing. That consequently, the purported question by the Applicants herein is inapplicable as the provisions of Articles 101 (6) and 105 (2) (b) clearly envisage an instance where a declaration must be made after the hearing of a petition. Therefore, that the facts relied upon do not support the consideration of the question as framed. Further, that these proceedings were an attempt to revisit a final determination of this Court and re-litigate a matter that was settled by the Court.

It was added that the conduct of the Applicants is to say the least a clear case of forum shopping as the matter touching on the Ruling at the core of these proceedings was recently in the Supreme Court in the case of **Hakainde Hichilema& Another v Edgar Chagwa Lungu & 6 Others Cause Number SCZ/8/273/2016** which was an appeal from the Order of the High Court under cause no. 2016/HP/1738. The said appeal was dismissed. This Court was urged to take judicial notice of the Supreme Court proceedings relating to this matter which shows a multiplicity of actions as held in the case of **Shamwana and 7 Others v The People (1985) Z.R. 41.**

It was further argued that these proceedings are most curious given the fact that this Court is a party to proceedings before the High Court which are in the main an appeal from the decision of this Court. It was surmised that it is indeed embarrassing and an abuse of this Court process that a litigant who has sued the Court in a division of the Judiciary that is of a lower jurisdiction can again come to the same Court to determine a matter that is still subject to the lower Court's jurisdiction. Counsel contends that this matter must be dismissed or struck out on account of abuse of the court process and a plethora of Supreme Court and High Court authorities were cited on the point of dismissing actions for abuse of court process and for multiplicity of actions.

Counsel further argued that the manner in which the question was brought to this Court for determination is inconsistent with the Constitutional provisions highlighted by the Applicants. Furthermore, that it is inconceivable that this Court can be called upon to determine whether the President of the Republic of Zambia can be sworn into the office of President by the 2nd Respondent as the then Vice President-elect. Counsel added that there was no provision in the Constitution that envisages an incident or situation where the Vice President-elect can swear into office the President-elect. Hence, that the question itself is vague, absurd, ambiguous, unclear and devoid of any discernible construction. Consequently, that there was no question worth determination before this Court.

Under item 2, the Respondents' counsel submitted that a cursory review of this matter reveals that there was no tenable cause of

action against the 1st and 2nd Respondents and that it was erroneous and completely unnecessary to enjoin them to these proceedings. This position was supported by the fact that there was no relief being sought against all the Respondents but that the Applicants appear to be faulting this Court's decision in the election petition. Thus, this shows a clear abuse of the Court's process. Order 18 rule 19 RSC was cited in support which provides that:

> **'19(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 endorsement, on the ground that-**
>
> **(a) it discloses no reasonable cause of action or defence, as the case may be; or**
> **(b) it is scandalous, frivolous or vexatious; or**
> **(c) it may prejudice, embarrass or delay the fair trial of the action; or**
> **(d) it is otherwise an abuse of the process of the court;**

Counsel then cited some cases including that of **Manharial Hartji Patel v Surma Stationers Limited, Shashikanji Devraj Vaghela and Emmanuel Mwansa (S.C.Z. Judgment No. 12 of 2009)**on the definition of the term 'cause of action' where Sakala, CJ (as he then was) opined at follows:

> **This Court agreed with the meaning assigned to the phrase 'cause of action', by Lord Diplock in the case of Letang v Cooper, (1) when he said the words meant 'simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person'.**

It was argued that the Applicants had not disclosed any factual situation upon which liability could be attached to the 1st and 2nd Respondents or which could entail the Applicants obtaining a judgment against the said Respondents.

With respect to item 4, Counsel argued that the Applicants cannot institute a civil claim against the 1st Respondent as he is clothed with statutory immunity against suit by the provisions of Article 98 of the Constitution. The case of **Godfrey Miyanda v Attorney General (S.C.Z. Judgment No. 9 OF 2009)**, was cited where Mambilima DCJ (as she then was) opined as follows:

> **Notwithstanding the immunity granted by Article 43 to a sitting President, there is nothing to stop a Court from determining whether the President, in the discharge of his duties has acted within the law and granting any remedies found to be appropriate against the Government. This is fortified by the State proceedings Act which has brought the President within the realm of a public officer. Strictly speaking, the President is not above the law. The Attorney-General on behalf of the Government is answerable for his actions. We do not agree that this Act is unconstitutional. If anything, it endorses Part III of the Constitution to make the actions of the number one citizen not to be above the law.**

It was submitted that this action should be set aside as the 1st Respondent enjoys immunity and could only be sued after the same was removed in accordance with the stringent provisions of the Constitution.

The Applicants' counsel in the skeleton arguments in opposition filed on 14th October, 2016 contended that the Respondents' application should be dismissed for the three (3) reasons, namely that it was not in accord with the provisions of Article 118 of the Constitution, that the authorities relied upon do not support the application and that the arguments advanced lacked merit.

Counsel submitted that Article 128 confers jurisdiction on this Court to deal with all constitutional matters but the Court has to take into account the principle in Article 118(2)(e) which provides that justice must be administered without undue regard to procedural technicalities. It was argued that the issues raised by

Respondents touch on procedure as opposed to substantive issues and the Respondents' intention was to have this action set aside or dismissed without being considered on merit. Counsel surmised that this was not in accord with the provisions of Article 118 of the Constitution and thus the application should be dismissed. Further, that the authorities stated on the face of the summons and pursuant to which the Respondents made this application do not support the application before Court. Counsel relied on Order 4 Rule 2(2) of the Constitutional Court Rules, which reads:

> **A matter relating to the interpretation of the Constitution shall be commenced by originating summons.**

Counsel argued that this provision is complete in itself. Therefore, that there can be no resort to Order 18 rule 19 RSC pursuant to Order 1 of the Constitutional Court Rules because that only applied to situations where there was a lacuna in our rules. Counsel acknowledged that the Originating Summons does not show the existence of a factual situation which entitles one person to obtain a remedy against another person, but that what was sought was the interpretation of the provisions of the Constitution. It is submitted that since the Applicants seek no remedy against the 1st and 2nd Respondents, the provisions of Order 18 Rule 19 RSC on showing the cause of action do not apply in this case. It is surmised that the 1st and 2nd Respondents were parties to the Ruling under cause no. 2016/CC/31, which judgment prompted this case. Therefore, that the interpretation of Articles 101 (6) and 105 (2) (b) would affect them and hence

cannot be made in their absence in line with the principle of natural justice.

It was further contended that the Respondents had not demonstrated the extent to which this Court lacked jurisdiction to adjudicate on the question contained in the Originating Summons.

Counsel also submitted that the Applicants were not trying to re-litigate matters because the question raised in the Originating Summons had never been the subject of adjudication between the parties before this Court or any other Court.

Counsel further reasoned that contrary to the allegation that the question raised was seeking to cast doubt on the enforceability of the judgment of this Court, the question accepts the said Ruling of this Court in the presidential election petition but goes further to look at it in the light of the provisions of Article 101(6) and 105(2) (b) of the Constitution.

With respect to item 1, the Applicants' counsel contended that this matter was properly commenced by Originating Summons, as provided for in Order 4 Rule 2(2) of the Constitutional Court Rules in that the question cannot be answered in the negative or affirmative without this Court interpreting the provisions of Articles 101(6) and 105 as well as other provisions of the Constitution relevant to the question. Counsel added that a perusal of the summons showed that neither the issue of abuse of the court process nor that of forum shopping is covered in the summons relating to this application.

As regards item 2, counsel reasoned that no case law or written law had been cited to support the proposition that the Originating Summons should be struck out because this Court has been sued under cause no. 2016/HP/1738. It was added that the Respondents had not demonstrated the relevance of the provisions of Order 18 Rule 19 RSC.

With respect to item 3, the Applicants' counsel stated that the Respondents' arguments did not cover this ground which alleges that the Originating Summons is incompetent and irregular for not disclosing a cause of action against the Respondents. It was submitted that reliance on Order 18 Rule 19 of the Rules of the Supreme Court was misplaced.

In response to the arguments on abuse of court process, the Applicants' counsel submitted that there was no abuse because it was the decision of this Court in cause no. 2016/CC/31, which had given rise to the question before Court.

On the issue of the 1st Respondent's immunity under item 5, the Applicants' counsel argued that based on Article 98 of the Constitution, the removal of immunity is applicable only if there was need to bring criminal prosecution against a person who has occupied the office of President. It was submitted that this case neither involved the criminal prosecution of the 1stRespondent nor was it founded on anything that the 1st Respondent did or failed to do in his private capacity but simply the interpretation of the provisions of Articles 101(6) and 105(2)(b) of the Constitution as to whether the 1st and 2nd Respondents could be sworn into office in the absence of a declaration by the Constitutional Court

that the Presidential election of 11th August, 2016 was valid. It was thus contended that this action did not come within the ambit of Article 98(1) of the Constitution.

I have duly considered the application and the arguments by the parties. This application raises the following four central issues for determination:

1. Whether the Respondents' application is irregular for being made pursuant to the wrong provisions.
2. Whether the Applicants' action has been wrongly commenced by way of Originating Summons.
3. Whether the Applicants' action discloses a legally tenable cause of action against the 1st and 2nd Respondents and whether an action can be instituted against the 1st Respondent without the statutory immunity under Article 98 being removed.
4. Whether the Applicants' action is an abuse of court process for being a veiled attempt to re-litigate the matter which was determined under cause no. 2016/CC/31.

I shall proceed to determine the four listed issues.

The first issue is whether this application is irregular for being made pursuant to the wrong provisions. The Applicants' position is that the provisions of the Constitution, Constitutional Court Act, Constitutional Court Rules and Rules of the Supreme Court 1965 (RSC) are inapplicable because they either do not deal with procedure or are not applicable in light of the fact that the Constitutional Court Rules are complete and do not warrant resort to the Rules of the Supreme Court. Further, that Order 2 rule 2 RSC is not part of the practice and procedure in the Court

of Appeal of England as provided in Order 1 of the Constitutional Court Rules.

I am satisfied that the application has been properly and regularly made in line with the outlined provisions. The Constitution and Constitutional Court Act deal with the issue of the jurisdiction of the Court, among others, while the Constitutional Court Rules and Rules of the Supreme Court 1965 deal with the practice and procedure. Order 1 of the Constitutional Court Rules provides in part as follows:

> **"(1) The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by the Act and these Rules, ... and in default thereof in substantial conformity with the Supreme Court Practice, 1999 (White Book) of England and the law and practice applicable in England in the Court of Appeal up to 31st December, 1999.**
>
> **(2) Where the Act and these Rules do not make provision for any particular point of practice or procedure, the practice and procedure of the Court shall be as nearly as may be in accordance with the law and practice for the time being observed in the Court of Appeal in England."**

Order 1 rule 2 (1) RSC provides that:

> **"(1) Subject to paragraph (2) these rules shall have effect in relation to all proceedings in the High Court and the civil division of the Court of Appeal."**

This provision clearly shows that Order 2 and Order 18 RSC that are relied upon by the 1st and 2nd Respondents in support of the application are applicable. The Constitutional Court Rules do not provide, in sufficient detail, for setting aside originating process for irregularity and want of jurisdiction as sought in this case. The resort to the Rules of the Supreme Court was thus not irregular or improper. The Applicants' arguments on this aspect lack merit, to say the least. Additionally, the provisions of Article

118(2)(e) do not preclude the raising of issues relating to irregularity of process and proceedings.

The second issue is whether the Applicants' action has been wrongfully commenced by way of Originating Summons. The Respondents' argument is that the question as couched in the Originating Summons does not seek an interpretation of the Constitution but is a veiled attempt to re-litigate a matter that was finally determined by this Court. The Applicants on the other hand contend that the questions seeks the interpretation of Articles 101(6) and 105(2) of the Constitution.

The question framed is as follows:

> **"Whether the 1st and 2nd Respondents can be sworn into the office of President and Vice-President of the Republic of Zambia by the 2nd or 3rd Respondent in the absence of a declaration by Constitutional Court, pursuant to the provisions of Article 101(6) or 105(2) (b) of the Constitution of Zambia, that the Presidential election of 11th August 2016 was valid."**

This question clearly does not seek an interpretation of the articles outlined contrary to the submission by the Applicants' Counsel. This is more so in light of the Applicants' submission that they are not challenging the decision of the Court under cause no. 2016/CC/31 in which the Court stated that there was no petition that was heard by the Court to warrant any declaration under Article 101(6). This is indeed an attempt by the Applicants to re-litigate the failed petition.

The third issue is whether the Applicants' action discloses a legally tenable cause of action against the 1st and 2nd Respondents and whether an action can be instituted against the

1st Respondent without the statutory immunity under Article 98 being removed.

The Applicants' counsel conceded that the question in the Originating Summons does not show the existence of a cause of action against the 1st and 2nd Respondents as there is no factual situation that entitles the Applicants to obtain a remedy against the said Respondents. The Applicants' counsel however argued that they had been joined in line with the principle of natural justice so that they could be heard as the interpretation of Articles 101(6) and 105(2) could affect them.

Order 18 rule 19 RSC provides for striking out of pleadings including originating summons if they do not disclose a reasonable cause of action, among others. In this case, the Applicants have not shown a cause of action to entitle them to a judgement against the 1st and 2nd Respondents. Order 5 rule 4 of the Constitutional Court Rules provide for striking out a party that is improperly joined to an action. It is never the intention of the statute to allow anyone to be made a party to proceedings when no cause of action has been shown against him. Otherwise, the party will be made to incur unnecessary expenses when no relief is targeted at him. The argument by the Applicants that the interpretation of the question could affect the 1st and 2nd Respondents does not sufficiently warrant them to be joined in this case particularly if the action was indeed for the interpretation of some constitutional provisions as argued and in light of the Attorney General being a party. I am thus satisfied that the 1st and 2nd Respondents were wrongly joined.

The other aspect concerns the provisions of Article 98 (1) of the Constitution which grants immunity to the Republican President in respect of civil proceedings being instituted or continued against him. The Applicants' counsel has argued that the immunity under Article 98 is only with regard to criminal matters. This argument is evidently flawed as the article expressly provides for immunity against civil proceedings as well. On that basis, the action cannot be continued against the 1st Respondent who would properly be represented by the Attorney General pursuant to the provisions of Article 177(5) (c) of the Constitution and Section 12 of the State Proceedings Act Cap 71.

The fourth issue is whether the Applicants' action is an abuse of court process for being a veiled attempt to re-litigate the matter which was determined under cause no. 2016/CC/31. The Respondents contend that these proceedings were seeking to fault the Court's final Ruling in dismissing the presidential election petition. It was argued that since the Court ruled that there was no petition before it after the 14 days period for hearing had elapsed, there could be no declaration as envisaged by Articles 101(6) and 105(2). Further, that the Applicants' conduct was clearly forum shopping and a multiplicity of actions considering the similar applications made before the High Court and Supreme Court to which this Court was joined as a party. The Applicants' position was that the issue of multiplicity of actions were not raised in this application. The Applicants' counsel further argued that there was no abuse of court process because it was the decision of the Court in cause no. 2016/CC/31 which had given rise to the question before Court.

Abuse of court process is a term used where there is improper use of the court machinery. In other words, where there is no bonafide or proper use of the court such as where a party institutes an action knowing fully well that there is no merit but does it to vex or oppress another party. This includes issues of re-litigating a matter, spurious claims and hopeless proceedings.

In this case, I note that there have been a multiplicity of actions by the Applicants against the Respondents in this Court, the High Court and the Supreme Court on the issue of swearing in of the 1st and 2nd Respondents. This conduct is akin to forum shopping which is frowned upon by the courts and also amounts to abuse of court process.

When the Applicants' question in the Originating Summons is considered, it isapparent that it is an attempt to appeal against the final decision of this Court of 5th September, 2016 or as put by the Respondents, a veiled attempt to re-litigate the matter. The Court's Ruling was very clear regarding the status of the Applicants' election petition as at 5th September, 2016 and made a pronouncement on the effect of the same in terms of Article101(6). The relevant portions of the Ruling at pages R15 and R16 read as follows:

> **"The last issue to be considered is the status of the Petition after the time limited for its hearing expired on Friday 2nd September, 2016. It should be noted that the Petitioners needed to present evidence in support of their allegations against the Respondents which they failed to do. In the absence of the evidence to support the allegations, the Court could not make any findings of fact or make a determination in accordance with Article 101(6) of the Constitution.....**
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> **Our position, therefore, is that the Petition stood dismissed for want of prosecution when the time limited for its hearing lapsed and, therefore, failed by reason of that technicality. This is because the Petitioners**

failed to prosecute their case within fourteen days of it being filed. That being the case, there is no petition to be heard before this Court as at today."(Emphasis mine)

Articles 101(6) and 105(2) of the Constitution provide in part that:

"(6) The Constitutional Court may, after hearing an election petition-

(a) declare the election of the presidential candidate valid; or
(b) nullify the election of the presidential candidate; or
(c) disqualify the presidential candidate from being a candidate in the second ballot."(emphasis mine)

"(2) The President-elect shall be sworn into office on the Tuesday following-

(d) the seventh day after the date on which the Constitutional Court declares the election to be valid."

The Applicants' counsel has submitted that there was no abuse of process because it was the decision of the Court under cause no. 2016/CC/31 that had given rise to the question before Court. The Applicants' counsel has further argued that the Applicants in their question accept the Ruling of the Court but go further to look at it in terms of the provisions of Article 101(6) and 105(2).

I must state that it is inconceivable that the Applicants and their counsel would fail to comprehend the Ruling of 5th September, 2016 as highlighted when it specifically mentions the effect of not having heard the petition on the pronouncements envisaged under Article 101(6).

The Applicants' action is indeed a veiled attempt to re-litigate the matter and thus comes within the ambit of abuse of court process. The question also shows that it is a hopeless proceeding doomed for failure making it an abuse of court process. This action is thus liable for dismissal. Parties must bring bonafide

and deserving cases to Court and not those aimed at wasting the Court's time and precious resources.

All in all, the 1st and 2nd Respondents application to set aside the originating process for irregularity succeeds. The Originating Summons herein is hereby set aside for irregularity and abuse of court process.

Costs are for the 1st and 2nd Respondents to be taxed in default of agreement.

Dated this 31st day of October, 2016

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M. S. MULENGA

JUDGE