

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2024/HP/0956

BETWEEN

IN THAT MATTER OF:

ORDER 53 RULES 3 OF THE SUPREME COURT (RSC) 1965 (1999 EDITION) VOLUMES 1 AND 2.

AND

IN THE MATTER OF:

THE DECISION OF THE 2ND DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY DATED THE 3RD OF JULY 2024 DECLARING VACANT THE CONSTITUENCY SEATS HELD BY BRIAN M. MUNDUBILE (MPOROKOSO), STEPHEN KAMPYONGO (SHIWANG'ANDU), NICKSON CHILANGWA (KAWAMBWA), RONALD KAOMA CHITOTELA (PAMBASHE), REMEMBER CHANDA MUTALE (CHITAMBO), MULENGA FRANCIS FUBE (CHILUBI), MUTOTWE KAFWAYA (LUNTE), CHRISTOPHER KANG'OMBE (KAMFINSI) AND EMMANUEL MPAKATA MUSONDA (LUPOSOSHI)

AND

IN THE MATTER OF:

WEDNESBURY UNREASONABLENESS, PROCEDURAL IMPROPRIETY, ILLEGALITY AND ACTING WITHOUT JURISDICTION, EXCEEDING ITS JURISDICTION, AND/OR FAILED TO COMPLY WITH THE RULES OF NATURAL JUSTICE ON THE PART OF THE SECOND DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY OF ZAMBIA.

AND

IN THE MATTER OF:

AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW

AND

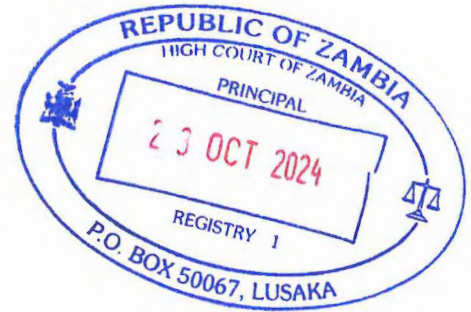
IN THE MATTER OF:

THE NINE MEMBERS OF PARLIAMENT WHO'S SEATS HAVE BEEN DECLARED VACANT BY THE SECOND DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY OF ZAMBIA

BETWEEN:

THE PEOPLE

V



THE ATTORNEY GENERAL EX PARTE HON. BRIAN MUNDUBILE, HON. STEPHEN KAMPYONGO, HON. NICKSON CHILANGWA, HON. RONALD KAOMA CHITOTELA, HON. REMEMBER CHANDA MUTALE, HON. MULENGA FRANCIS FUBE, HON. MUTOTWE KAFWAYA, HON. CHRISTOPHER KANG'OMBE AND HON. EMMANUEL MPAKATA MUSONDA

Before the Hon. Mrs Justice S. M Wanjelani in Chambers on the 23rd day of October, 2024

For the Applicants: M. Zulu, E. Phiri, Messrs Makebi Zulu Advocates, with C. Ngaba, Messrs Lungu Simwanza and Co

For the Respondent: C. Mulenga, Acting Chief State Advocate, L. Daka, Principal State Advocate with S. Banda, Legal Officer, National Assembly.

JUDGMENT

Cases referred to:

- 1. Amanda Muzyamba Chaala (Administratrix in the Estate of the Late Florence Mwiya Siyuni Chaala) V The Attorney General, Supreme Court Judgment No.6 of 2012;*
- 2. Derrick Chitala v Attorney General (1995) ZR 91;*
- 3. Associated Provincial Picture Houses Limited v Wednesbury Corporation(1948) 1 KB 223;*
- 4. Fredrick Jacob Titus Chiluba v Attorney-General, Appeal Number 125 of 2002;*

5. *Dean Namulya Mung'omba, Bwalya Kanyanta Ng'andu and Anti-Corruption Commission V Peter Machungwa Golden Mandandi and Attorney-General, SCZ Judgment No.3 of 2003;*
6. *Chishimba Kambwili v The Attorney General, 2019/CC/009;*
7. *Chick Masters Limited and Dr. Mwilola Imakando v. Investrust Bank PLC, SCZ/8/271/2014;*
8. *Hakainde Hichilema v. Attorney General, Appeal No. 4/2019;*
9. *R. v. Epping and Harlow General Commissioners, Ex P. Goldstraw (1983) 3 ALL E.R. 257, 262;*
10. *Crossland Mutinta and Bashir Seedat v. Donovan Chipanda, Selected Judgment No.53 of 2018;*
11. *Nyampala Safaris (Z) Limited and Others v. Zambia Wildlife Authority and Others, Appeal No. 35 of 2003; and*
12. *Communications Authority v Vodacom Zambia Limited, SCZ Judgment No. 21 of 2009.*

Legislation referred to:

1. *The Constitution of Zambia(Amendment) Act No.2 of 2016*
2. *The Rules of the Supreme Court of England, 1999 Edition, (White Book).*

1.0 INTRODUCTION

- 1.1 This is a Judgment on the Applicants' Notice of Motion to commence judicial review proceedings filed pursuant to **Order 53 Rule 3 of the Rules of the Supreme Court.**
- 1.2 On 5th July, 2024, the Applicants applied for Leave to commence for judicial review proceedings against the

decision of the Second Deputy Speaker delivered in a Ruling dated 3rd July, 2024.

- 1.3 Leave was granted on the 10th of July, 2024, and the Respondent's application to discharge the same was decline after an *inter-partes* hearing on 9th September, 2024.
- 1.4 Consequently, the Matter proceeded to the substantive judicial review hearing on 7th October, 2024. The Respondent opposed the application through an Affidavit and Skeleton Arguments, and the Applicants filed an Affidavit in Reply with the accompanying Skeleton Arguments.

2.0 THE APPLICANTS' CASE

- 2.1 The Applicants' Notice of Motion for Leave to commence judicial review set out the reliefs sought couched as follows:

2.1.1A *Declaration that the decision of the Second Deputy Speaker of the National Assembly of Zambia dated the 3rd day of July 2024 declaring the Nine Parliamentary seats of the Applicants vacant is illegal as the Patriotic Front Party has not expelled the Nine Applicants from the party;*

2.1.2A *Declaration that the decision of the Second Deputy Speaker of the National Assembly of Zambia when he declared the Nine Parliamentary seats of the Applicants vacant on the ground that the action in the Constitutional Court had been dismissed without having regard to the fact that there was an*

active matter under cause number 2024/CCZ/009 is irrational, unreasonable, and unjustified as the purported expulsion of the Applicants is pending before Court and is thus sub judice;

2.1.3A Declaration that the procedure adopted by the Second Deputy Speaker of the National Assembly of Zambia in declaring the Nine Parliamentary seats of the Applicants vacant is illegal and contrary to the Parliamentary procedure as contained in the Standing Orders, in particular, Standing Order No. 57 (1)(2)(3) and (4) of the National Assembly of Zambia, Standing Order 2024, precedence and custom:

2.1.4 An Order of Certiorari to remove into the Court, for purposes of quashing, the decision of the Second Deputy Speaker of the National Assembly of Zambia of declaring the Nine Parliamentary seats of the Applicants vacant as the said Second Deputy Speaker of the National Assembly acted in error of law on the face of the Record;

2.1.5 An Order to the effect that if Leave is granted to the Applicants to file the application for Judicial Review, such application should operate as a Stay of the illegal, irrational, unreasonable and unjustified decision made by the Second Deputy Speaker of the National Assembly of Zambia of declaring the Nine Parliamentary seats of the Applicants vacant;

2.1.6 *If Leave to apply is granted, a direction that the hearing of the application for judicial review be expedited and the Applicants should be heard by the Honourable Court when determining this application; and*

2.1.7 *An Order that the costs of and occasioned by this application be borne by the Respondent.*

2.2 The Grounds on which the reliefs are sought were stated as follows:

2.2.1 *Lack of statutory jurisdiction:* that the Second Deputy Speaker of the National Assembly of Zambia does not have statutory jurisdiction to declare the Nine (9) Parliamentary seats of the Applicants vacant.

2.2.2 *Irrationality:* that the decision of the Second Deputy Speaker of the National Assembly of Zambia declaring the Nine (9) Parliamentary seats of the Applicants vacant is irrational, unreasonable and unjustified as the expulsion of the Applicants is pending before Court.

2.2.3 *Error of law on the face of the Record:* that the decision of the Second Deputy Speaker of the National Assembly of Zambia of declaring the Nine (9) Parliamentary seats of the Applicants vacant be moved into the High Court for purposes of determination and quashing as the said Second Deputy Speaker of the National Assembly acted in error of law on the face of the Record on account

of his failure to comply with the *Standing Order 52* which stipulates the procedure to be followed when the Speaker is about to render a Ruling on a Point of Order raised in Parliament.

- 2.3 The application was supported by an Affidavit sworn by **Brian Mundubile** on his own behalf and on behalf of the other Applicants. He deposed that on or about 6th December, 2023, it was brought to his and other the Applicants' attention that there were letters purporting to expel them signed by Morgan Ngona who was purporting to be Secretary General for the Patriotic Front Party when in fact not. He stated that this stemmed from the occurrence of internal Party disputes that were obtaining at the material time.
- 2.4 He averred that they proceeded to Court to challenge the purported expulsion and the Matter was thrown out by the Constitutional Court stating that they had no jurisdiction. The Deponent vied that further to the correspondence alluded to above, another letter dated 27th June, 2024, was issued under the hand of Miles Bwalya Sampa, acting in his capacity as President of the Patriotic Front Party for purposes of reversing the expulsions of 6th December, 2023. He averred that the same was brought to the attention of the Speaker of the National Assembly as per exhibit marked "**BM2**".
- 2.5 The Deponent stated that he, along with the other Applicants had also sought recourse to the

Constitutional Court against their purported expulsion in proceedings under *Cause No. 2024/CCZ/009*.

- 2.6 He added that the said matter is active before Court and that the Speaker of the National Assembly was notified and served with the said process on 27th June, 2024, as per exhibit marked “**BM3**” belong a letter of service relating to the Petition.
- 2.7 The Deponent contended that the foregoing notwithstanding, the Second Deputy Speaker was moved by Point of Order to make a Ruling on the status of the Applicants in the National Assembly. He stated that in addressing this question the Second Deputy Speaker proceeded to declare his seat and those of his colleagues vacant on account of a purported expulsion notwithstanding that there was an active matter in Court.
- 2.8 The Deponent added that the Ruling referred to above was read out at about 17hrs on the 3rd day of July, 2024, but that on the said date, there was no such business to be transacted on the Order Paper as per exhibit marked “**BM6**”. He vied that the requirement of the procedure in the House is that any business to be transacted must be set out in the Order Paper.
- 2.9 He avowed further that if any business additional to what is set out is to be transacted, there has to be an amendment to the Paper and such amendment must be made at least two hours before such business is tabled. He further averred that the Order Paper of the day was

amended after the Ruling had been read, specifically at 17hrs and the Order Paper was amended at 18hrs.

- 2.10 The Deponent stated that he was of the view that the Second Deputy Speaker acted in a manner that is subject to review by this Court. He vied that given the procedure set out above, it was clear that the business so transacted was not part of what was to be transacted on the said day.
- 2.11 He contended that the amendment was after the business was transacted contrary to what the procedure in the House requires. He deposed that he had been advised by Counsel on Record and believes the same to be true that the procedure adopted for the transaction of this business was improper and alien to that which is known in the House.
- 2.12 He further stated that in the alternative, the Second Deputy Speaker's declaration was irrational and illegal as their seats cannot be validly declared vacant when they maintain active proceedings before the Constitutional Court challenging the purported expulsion.
- 2.13 The Applicants filed Skeleton Arguments to support their application and based on the Grounds upon which the reliefs were sought.
- 2.14 With respect to "*lack of statutory jurisdiction*", it was submitted that the Second Deputy Speaker does not have jurisdiction to declare the Nine Parliamentary seats of the Applicants vacant when the Party which

sponsored them has not expelled them from the Party. It was stated that the decision of not expelling the Applicants was communicated to and received by the Office of the Speaker of the National Assembly of Zambia.

- 2.15 It was also contended that the Second Deputy Speaker did not follow the Parliamentary *Standing Orders* when making the decision of declaring the Nine Parliamentary seats of the Applicants vacant. In support of this assertion, reference was to the decision of the Supreme Court in the case of **Amanda Muzyamba Chala (Administratrix in the Estate of the Late Florence Mwiya Siyuni Chala) V The Attorney General**⁽¹⁾ wherein it was held that the public law remedy of judicial review is necessary to enable a citizen challenge the lawfulness of decisions made by public bodies or accountability of public bodies to ensure that both the governed and the Government adhere to the rule of law.
- 2.16 It was added that in the case of **Derrick Chitala v Attorney General**⁽²⁾, the Supreme Court stated that by “illegality” is meant that the decision maker must understand correctly the law that regulates his decision-making process and must give effect to it and that if the decision maker fails to understand that law, then the decision is illegal.
- 2.17 In relation to “*Irrationality*” Counsel argued that the decision of the Second Deputy Speaker is irrational, unreasonable and unjustified as the expulsion of the

Applicants is pending before Court. It was submitted that by 'irrationality' is meant, what can by now be succinctly referred to as "Wednesbury unreasonableness" as alluded to in the case of **Associated Provincial Picture Houses Limited v Wednesbury Corporation**⁽³⁾ and cited in the case of **Fredrick Jacob Titus Chiluba v Attorney-General**⁽⁴⁾, to refer to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

2.18 Counsel also referred to the case of **Dean Namulya Mung'omba Bwalya Kanyanta Ng'andu and Anti-Corruption Commission V Peter Machungwa Golden Mandandi and Attorney-General**⁽⁵⁾ which alluded to **Order 53 of the Rules of the Supreme Court** as having created a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other persons or bodies which perform public duties or functions.

2.19 Additional reference was made to the case of **Chishimba Kambwili v The Attorney General**⁽⁶⁾, where it was stated that by pronouncing himself on a matter that was active and pending hearing before the Courts on the question whether or not the Petitioner had crossed the floor the High Court, the Speaker, by proceeding as he did, fell foul of the *sub judice* rule.

2.20 Counsel argued that the Second Deputy Speaker of the National Assembly offended the rules of *sub judice* by proceedings to declare the Nine (9) Parliamentary seats vacant when the Applicants have challenged their expulsion in Court and the matter is currently pending before the Court.

2.21 With respect to the ground of there being an “*Error of law on the face of the Record*”, the Applicants argued that the decision of the Second Deputy Speaker be moved into the High Court for purposes of determination and quashing as the said Second Deputy Speaker acted in error of law on the face of the Record. Counsel submitted that the *Standing Order 52* stipulates the procedure which is supposed to be followed when the Speaker is about to render a Ruling on a Point of Order raised in Parliament. It was averred that the failure to follow the laid down procedure makes the Ruling of the Speaker to be in error of law.

3.0 THE RESPONDENT’S CASE

3.1 The Respondent opposed the Motion thorough an Affidavit in Opposition and Skeleton Arguments. The Affidavit was sworn by Stephen **Kawimbe**, the Deputy Clerk (Procedure) of the National Assembly, who deposed that on 28th June, 2024, and 3rd July, 2024, the Office of the Speaker received letters from the PF Party President informing her that the Party had resolved to reverse the expulsion of the Nine (9) Applicants from the Party.

- 3.2 He stated that on 27th June, 2024, the Applicants filed Originating Process before the Constitutional Court under *Cause Number 2024/CCZ/009*, seeking the same reliefs they sought in their dismissed Court process in which they had sought to challenge their expulsion from the PF Party despite the Court having already guided that it had no jurisdiction to hear the matter.
- 3.3 The Deponent added that on 3rd July, 2024, the Second Deputy Speaker announced to the House that following the dismissal of the Petition challenging the expulsion of the Nine (9) Applicants, a vacancy had occurred in their respective Constituencies.
- 3.4 He averred that Standing *Order 57 (1), (2), (3) and (4)* of the National Assembly of Zambia regulates the manner in which business should be transacted at each seating of the National Assembly and that the procedure to be followed by the Speaker when a Member of Parliament is expelled from the Party that sponsored the member to the National Assembly is contained in **Article 72 (5) and (8)** of the **Constitution**.
- 3.5 He contended that the Applicants' seats in the National Assembly became vacant on 27th June, 2024, immediately after the Ruling of the Constitutional Court and that they did not become vacant by virtue of the Ruling delivered by the Second Deputy Speaker on 3rd July, 2024.
- 3.6 He vied that the decision-making process and procedure to be interrogated is contained in **Article 72 (5) and (8)**

of the **Constitution** and not *Standing Order 57 (1), (2), (3) and (4)* of the National Assembly of Zambia Standing Orders.

- 3.7 The Deponent vied that on 4th July, 2024, the Second Deputy Speaker informed the Electoral Commission of Zambia, in writing, that a vacancy had occurred in the respective Constituencies. He added that it was his belief that there was no challenge of the expulsion of the Nine (9) Members of Parliament properly before Court at the time the Second Deputy Speaker announced to the House that a vacancy had occurred in the Nine (9) Constituencies.
- 3.8 He deposed that he believes that the Second Deputy Speaker followed the procedure provided in accordance with the **Constitution** before announcing that the said seats had become vacant as a result of an expulsion from the political party which sponsored the members for election to the National Assembly.
- 3.9 In the Skeleton Arguments in Opposition, the Respondent submitted in line with the averments in the Affidavit in Opposition. It was stated that it is an established principle of law that the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself and reference was made to *Practice Note 53/14/19 of the Rules of the Supreme Court of England*.

- 3.10 Counsel reiterated that the procedure to be followed after a Member of Parliament has been expelled from the political party which sponsored the member for election to the National Assembly is outlined in **Article 72 (5) and (8) of the Constitution** and that following the expulsion of the Applicants from the PF, they informed the National Assembly, through their Advocates, that they had challenged their expulsion under *Cause Number 2023/CCZ/0028*. It was averred that in view of the foregoing, the Speaker did not act on the expulsion of the Applicants in compliance with **Article 72 (5) of the Constitution**.
- 3.11 It was averred that following the Constitutional Court's decision on 27th June, 2024, to dismiss the Petition filed by the Applicants on account of lack of jurisdiction, the Second Deputy Speaker, on 4th July, 2024, proceeded to inform the Electoral Commission of Zambia of the vacancy that had occurred in the respective Constituencies which was in compliance with **Article 72 (8) of the Constitution**, and that the communication was merely for housekeeping purposes
- 3.12 It was argued that the implication of the foregoing is that whether or not the Speaker acted in compliance with *Standing Order No 57 (1), (2), (3) and (4)* of the National Assembly of Zambia Standing Orders, 2024, is of no consequence as the Applicants had lost their seats, on 27th June, 2024, by operation of law as provided by **Article 72 (5) and (8) of the Constitution**.

- 3.13 It was contended that the letters received on 28th June, and 3rd July, 2024, informing the Speaker that the expulsion of the Applicants had been reversed by the Party were of no effect because the seats of the Applicants had already become vacant immediately the Ruling of the Constitutional Court was delivered on 27th June, 2024, and by virtue of **Article 72 (5) of the Constitution**.
- 3.14 It was further argued that the Applicants' originating process filed before the Constitutional Court under *Cause Number 2024/ CCZ/009* had substantially the same Parties and sought the same reliefs that they had sought in their dismissed Court process and that this was despite the Court having already guided that it had no jurisdiction to hear the Matter.
- 3.15 It was contended that for purposes of **Article 72 (5) of the Constitution**, it was deemed that the Matter was one that had been juridically decided on its merit and could not be litigated again between the same parties and the case of **Chick Masters Limited and Dr. Mwilola Imakando v. Investrust Bank PLC⁽⁷⁾**, was adverted to on the concept of *res judicata*.
- 3.16 It was contended that based on the foregoing guidance from the Supreme Court, the Speaker proceeded to announce the vacancy of the Nine (9) seats despite the Applicants having refiled the same Petition that had already been decided on by the Constitutional Court. Counsel vied that the Applicants want to relitigate a

matter that has already been decided on and that the Constitution is couched in clear and mandatory terms.

3.17 It was contended that the Second Deputy Speaker acted in strict compliance with the procedure provided by the **Constitution** and that therefore, the decision-making process adopted the cannot be faulted and subjected to judicial review.

3.18 It was further argued, that the foregoing notwithstanding, the Respondent holds the view that for this Court to determine whether the decision-making process adopted by the Second Deputy Speaker followed the provisions of **Article 72 (5) and (8) of the Constitution**, this Court would need to interpret the said provisions, which is a strict preserve of the Constitutional Court as held in the case of **Hakainde Hichilema v. Attorney General**⁽⁸⁾, thereby depriving this Court of jurisdiction to entertain the Applicants substantive application for judicial review .

3.19 In further arguments, Counsel submitted that it is an established principle of law that an Applicant in judicial review proceedings should first exhaust all alternative avenues of remedy as alluded to in case of **R. v. Epping and Harlow General Commissioners, Ex P. Goldstraw**⁽⁹⁾.

3.20 Counsel vied that Applicants currently have an active matter before the Constitutional Court under *Cause Number 2024/CCZ/009* and that, the Applicants ought to amend their originating process and seek a

determination by the Constitutional Court of whether the Second Deputy Speaker acted in accordance with the provisions of **Article 72 (5) and (8) of the Constitution.**

3.21 It was contended that a determination on this matter by the Constitutional Court would effectively grant the same reliefs the Applicants seek from this Court and that consequently the Applicants have not exhausted all avenues of remedy available to them.

4.0 THE APPLICANTS' REPLY

4.1 The Applicants filed an Affidavit in Reply deposed to by **Brian Mundubile** in which he essentially reiterated his averments in the Affidavit in Support of the Application and stated that the Respondent's Affidavit constituted an admission that at the time the decision was made to declare the Applicants' seats vacant, the Office of Speaker was aware that their expulsions had been reversed.

4.2 He averred further that there was no decision by the Court confirming the expulsion and that there was an active case in *Cause Number 2024/CCZ/009* challenging the expulsion of the Applicants and that he verily believes that the Second Deputy Speaker usurped the power of the Courts and fell foul of the *sub judice* rule.

4.3 The Deponent averred that he had been advised by his Advocates and verily believes the same to be true that the *Standing Orders* regulate the manner in which

business is to be transacted at each sitting of the National Assembly and if any additional business arises which is to be addressed, the *Standing Order* ought to be amended at least 2 hours before the next sitting. He said that the Order Paper was amended after the Ruling had been read out.

- 4.4 He vied that the procedure followed was an error and that the Second Deputy Speaker acted in a manner that is subject to review by this Court. He added that the procedure as highlighted under **Article 72(5)** and **(8)** of the **Constitution** would not have been followed had the Second Deputy Speaker regarded the letter brought to his attention, which letter is marked '**BM 2**' in his Affidavit in Support.
- 4.5 The Deponent averred that the Ruling of the Constitutional Court did not render or confirm the expulsion of the Applicants so as determine that the seats were vacant but it dismissed the matter on account of jurisdiction.
- 4.6 He stated that the Second Deputy Speaker, prior to issuing *Standing Orders* for the Business of National Assembly for that day, did deliver a Ruling wherein he rendered the seats of the Applicants vacant and as advised by his Advocates, he believes that the procedure adopted by the Second Deputy Speaker was improper and alien to that known by the House and that the declaration of the seats being vacant is irrational.

- 4.7 Counsel for the Applicants filed arguments in Reply the gist of which was that at the time the Second Deputy Speaker delivered his Ruling on the Point of Order there was active matter before the Constitutional Court under *Cause Number 2024/CCZ/0009* wherein the Applicants had challenged their expulsion from the party and that the Ruling delivered was not on the Order Paper of the day as required by the *Standing Orders* of the House.
- 4.8 It was reiterated that the decision-making process of the Second Deputy Speaker was illegal, procedurally improper and made without the necessary jurisdiction as that is the preserve of the Court as ably guided by the Constitutional Court in the case **Chishimba Kambwili v. the Attorney General**⁽⁶⁾.
- 4.9 It was argued that, in coming to the decision that the matter filed in Constitutional Court by the Applicants was *res judicata*, contrary to public policy, an abuse of the Court and that the **Constitution** could not be held at ransom, the Second Deputy Speaker usurped the power of the Courts and was *sub judice*.
- 4.10 In response to the assertion that this Court would need to interpret the provisions **of Articles 72 (5) and (8) of the Constitution** in determining decision making process adopted by the Second Deputy Speaker, it was submitted that the purpose of judicial review is to check the procedural propriety of the decision making process of the Second Deputy Speaker and placed reliance on the cases of **Derrick Chitala (Secretary of the Zambia**

Democratic Congress) v Attorney General⁽²⁾ and Frederick Jacob Titus Chiluba and Attorney-General⁽⁴⁾ where the Supreme Court explained the ground of procedural impropriety.

4.11 Counsel argued that in the present case, the Court is not called upon to interpret the provisions of the **Constitution** but to determine whether, the Second Deputy Speaker, in exercising powers granted to him observed the rules that are laid down in the legislation and acted fairly in respect of the persons affected by his decision.

4.12 It was averred that similarly, the challenge of the expulsion in the Constitutional Court cannot be deemed to be an alternative remedy as despite the action subsisting before the Constitutional Court and Second Deputy Speaker being aware of it, he proceeded to declare the Applicants seats vacant.

5.0 THE HEARING

5.1 During the hearing, Counsel for the Applicants relied on the process on Record and added that the alternative remedy was the action before the Constitutional Court which the Deputy Speaker disregarded when he proceeded to declare the seats vacant.

5.2 Counsel for the Respondent also relied on the process on Record and reiterated that the letters reversing the expulsions of the Applicants received on 28th June, 2024, and 3rd July, 2024, were of no effect as the seats

became vacant immediately after the Constitutional Court delivered its Ruling on 27th July, 2024.

5.3 It was argued that the Deputy Speaker's decision-making process was a constitutional one in line with **Article 72(5) and (8) of the Constitution.**

5.4 With respect to the Applicants' argument on the alternative remedy, it was submitted that this is in the Matter they filed in the Constitutional Court under which the Applicants should have sought the remedies they seek in this Matter and that consequently, this Court has no jurisdiction to determine this Matter.

5.5 In Reply, Counsel for the Applicants submitted that there was no Order from Constitutional Court confirming the expulsion of the Nine (9) Members of Parliament as required by **Article 72(5) of the Constitution.** It was argued that the Second Deputy Speaker wrongly relied on the decision of the Constitutional Court on jurisdiction and thus he had no basis for the decision arrived at in the absence of an Order confirming the expulsions.

6.0 DETERMINATION OF THE MATTER

6.1 I have considered the Notice of Motion and the Affidavits and the spirited Skeleton arguments by the Parties' Counsel, to whom I am indebted.

6.2 However, before I can proceed any further in this Matter, I note that the Respondent has submitted that this Court has no jurisdiction to determine whether the decision-making process adopted by the Speaker

followed the provisions of **Article 72 (5) and (8)** of the **Constitution**, as in doing so this Court would need to interpret the said provisions, which is a strict preserve of the Constitutional Court.

- 6.3 The Applicants have argued that, in coming to the decision that the matter they filed in Constitutional Court was *res judicata*, contrary to public policy, an abuse of the Court and that the **Constitution** cannot be held at ransom, the Second Deputy Speaker usurped the power of the Courts and that this was *sub judice*.
- 6.4 As the issue of jurisdiction has been raised, it has to be determined first taking into account the Supreme Court guidance in the case of **Crossland Mutinta and Bashir Seedat v. Donovan Chipanda**⁽¹⁰⁾ wherein it was stated that:

“The decision of a Court which purports to exercise a jurisdiction it does not have amounts to nothing. This is better illustrated by the latin maxim, ex nihilo nihil fit (from nothing, nothing comes).”

- 6.5 I bear in mind the fact that “the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself.”
- 6.6 The undisputed facts on the ground show that at the time the Second Deputy Speaker made the decision embodied in the Ruling of 3rd July, 2024, there was a

matter before the Constitutional Court filed on 27th June, 2024.

- 6.7 Therefore, it is my view that the crux of this Matter is whether or not in the decision-making process, the Second Deputy Speaker usurped the powers of the Court in arriving at a conclusion that there was no challenge of the expulsion properly before Court. The issue in casu is not about whether or not the Second Deputy Speaker had the right to make that decision in line with **Article 72(5) and (8) of the Constitution**.
- 6.8 Based on the foregoing, it is my considered view that I have the jurisdiction to determine this Matter as it does not involve interpreting the provisions of the **Constitution** as alleged by the Respondent.
- 6.9 Coming to the substantive matter before me, it is important to state from the outset that judicial review refers to the power of the High Court to supervise inferior Courts, tribunals, public bodies and officers entrusted with statutory powers in the exercise of those powers.
- 6.10 The purpose of judicial review has been stated in **Order 53/14/19 of the Rules of the Supreme Court** that:
“the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial review is made, but the decision-making process itself.”

6.11 The Supreme Court in the case of **Frederick Jacob Titus Chiluba V Attorney-General⁽⁴⁾**, added that:

“It is important to remember in every case that the purpose of [the remedy of judicial review] is to ensure that the individual is given fair treatment by the authority to which he has been subject.”

6.12 This position was expounded further by the Supreme Court in the case of **Amanda Muzyamba Chaala (Administratrix of the Estate of the late Florence Mwiya Siyunyi Chaala) v. Attorney General Mukelabai Muyakwa⁽¹⁾** wherein it was stated, *inter alia*, as follows:

“...The remedy is necessary for accountability of public bodies for it ensures that both the governed and the government adhere to the rule of law. It helps to protect citizens against bureaucratic excesses...Public law requires that those who are entrusted with the exercise of public power should not do so arbitrarily or subject to their own whims and caprices; they must give effect to the true intent of the law while upholding the fundamental tenets of individual human rights.”

6.13 The Grounds upon which the decisions of public bodies may be reviewed were restated in the case of **Nyampala Safaris (Z) Limited and Others v. Zambia Wildlife Authority and Others⁽¹¹⁾**, in the following terms:

“(a).....

(b).....

(c) A decision of an inferior Court or public authority may be quashed (by an order of certiorari) where that Court or authority acted:-

(i) without jurisdiction; or

(ii) exceeded its jurisdiction; or

(iii) failed to comply with the rules of natural justice where those rules are applicable; or

(iv) where there is an error of law on the face of the record; or

(v) the decision is unreasonable in the Wednesbury Sense, namely, that it was a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably, could, have reached.”

6.14 In casu, the facts of this Matter show that:

6.14.1 on 6th December 2023, the Applicants who are Members of Parliament by letters under the hand of Morgan Ngona were expelled from the Patriotic Front;

6.14.2 The Applicants commenced a matter in the Constitutional Court challenging their expulsion;

- 6.14.3 On 27th June, 2024, the Constitutional Court dismissed the Applicants' Petition on the ground of want of jurisdiction;
- 6.14.4 On the same date, the Applicants filed a Matter in the Constitutional Court under Cause No. 2024/CCZ/ 009 as per the Applicants' exhibit "**BM5**";
- 6.14.5 On the same date, a letter written by the Applicants' Counsel containing the Petition and Affidavit verifying facts was served on the Office of the Clerk of the National Assembly as per exhibit "**BM3**";
- 6.14.6 A letter dated 27th June 2024, written by Miles Bwalya Sampa, acting in his capacity as President of the Patriotic Front reversing the expulsions of 6th December 2023 was served and brought to the attention of the Speaker of the National Assembly on 28th June, 2024, as per exhibit "**SK1**" of the Respondent's Affidavit in Opposition;
- 6.14.7 A Point of Order was raised on the status of the Applicants on 28th June, 2024 and the Second Deputy Speaker of the National Assembly on 3rd July, 2023 at 17hrs delivered a Ruling wherein he stated that there being no proper challenge of the expulsions before Court, he considered that a vacancy had occurred in those Constituencies and invoked the provisions of Article 72(8) of the

Constitution to write to the Electoral Commission of the vacancies effective 27th June, 2024.

- 6.15 The question for determination is whether the decision-making process by the Second Deputy Speaker to declare the seats held by the by the Applicants herein vacant was illegal, irrational or an error of the law on the face of the Record as alleged Applicants.
- 6.16 I note that the Applicants have sought a number of declaratory reliefs and to this end, the Supreme Court has guided on what the Courts need to consider in dealing with declaratory reliefs, notably in the case of **Communications Authority v Vodacom Zambia Limited**⁽¹²⁾ wherein it was stated, *inter alia*, that:

“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) Will not grant a declaration unless all the parties affected by, and interested in it are before the Court...”

- 6.17 The Applicants seek “a declaration that the decision of the Second Deputy Speaker of the National Assembly of Zambia dated 3rd July, 2024, declaring the Nine Parliamentary seats of the Applicants vacant is illegal as the Patriotic Front Party has not expelled the Nine Applicants from the Party.”
- 6.18 Clearly, the Patriotic Front Party which is likely to be affected by a declaration being sought by the Applicants herein is not a Party to these Proceedings. Granting such a declaration would amount to determining the expulsion issue between the Applicants and the Patriotic Front Party, and I would be doing so without hearing the Patriotic Front Party as an interested party. Consequently, I decline to make such a declaration.
- 6.19 The Applicants also seek a declaration that the decision of the Second Deputy Speaker when he declared the Nine (9) Parliamentary seats of the Applicants vacant on the ground that the action in the Constitutional Court had been dismissed without having regard to the fact that there was an active matter under *Cause Number 2024/CCZ/009*, is irrational, unreasonable, and unjustified as the

purported expulsion of the Applicants is pending before Court and is thus *sub judice*. It was also argued that he did not follow the Parliamentary *Standing Order* of the National Assembly of Zambia.

- 6.20 The Respondent submitted that the Second Deputy Speaker made the decision in line with the provisions of **Article 72(5)** and **(8)** of the **Constitution** as the Applicants seat fell vacant when the Constitutional Court dismissed their Petition under *Cause Number 2023/CCZ/0028*.
- 6.21 In relation to the Matter *under Cause Number 2024/CCZ/009*, it was argued that for purposes of **Article 72 (5) of the Constitution**, it was deemed that the dismissed Matter had been juridically decided on its merit and could not be litigated again between the same Parties. In addition, it was argued that the Second Deputy Speaker proceeded as he did because the active matter was similar to the one that had been dismissed and that the matter was therefore *res judicata*, an abuse of Court process and against public policy.
- 6.22 The Applicants have therefore alleged that the Second Deputy Speaker's decision was irrational. In addition to the submission on "irrationality" at Paragraph 2.17 herein, the Supreme Court in the case of **Nyampala Safaris Zambia Limited and Others v Zambia Wildlife Authority**⁽¹¹⁾ described it as:

“The decision is unreasonable in the Wednesbury sense if it is a decision which no person or body of persons properly directing itself on the relevant law and acting reasonably, could reasonably have reached.”

6.23 It is a fact that the Second Deputy Speaker is part of and operates in the National Assembly and there is an allegation that he delved into a matter that was active before the Court. The **Constitution** provides for the functions of Parliament and the Judiciary in **Articles 63** and **119** respectively as follows:

“63. (1) Parliament shall enact legislation through Bills passed by the National Assembly and assented to by the President...”

119. (1) Judicial authority vests in the Courts and shall be exercised by the Courts in accordance with this Constitution and other laws...”

6.24 In the case of **Chishimba Kambwili v Attorney General**⁽⁶⁾ the Constitutional Court had the occasion to interpret these **Articles** of the **Constitution** and stated *inter alia*, that:

“...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 the Court of the land.”

6.25 The issue is whether taking into account the facts of this case and the law that provides for the functions of Parliament and the Judiciary, it can be said that the decision-making process of the Second Deputy Speaker to declare the seats held by the Applicants vacant was irrational?

6.26 It is not in dispute that Second Deputy Speaker issued a Ruling dated 3rd July, 2024 wherein he a relied on **Article 72(5) of Constitution** and stated therein, *inter alia*, that:

“Further, since there is currently no challenge of the expulsion properly before Court and the expulsions having been effected in December, 2023, I consider that a vacancy has occurred in Pambashe, Kawambwa... and I invoke the powers vested in me in Article 72(8) of the Constitution to write to the Electoral Commission informing it of the vacancies in the said constituencies effective Thursday, 27th June, 2024.(underline by Court)

6.27 A perusal of the chronology of events as partly outlined under Paragraph 6.14 herein shows that the Applicants’ initial Petition was dismissed by the Constitutional Court on 27th June, 2024; the Petition

under *Cause Number 2024/CCZ/009*, was filed on the same day and served on the Clerk of the National Assembly; the Point of Order was raised on 28th June, 2024; and the Ruling was rendered on 3rd July, 2024 by the Second Deputy Speaker.

- 6.28 The Respondent, in addition, to stating that the Second Deputy Speaker proceeded in accordance with the provisions of **Article 72(5) and(8)** of the **Constitution**, contended that the Second Deputy Speaker proceeded as he did because the active Matter was similar to the one that had been dismissed and that the Matter was therefore *res judicata*. This clearly shows that the Second Deputy Speaker was aware of the Matter filed on 27th June, 2024 and this is also alluded to in the Respondent's Affidavit in Opposition.
- 6.29 Clearly, the determination of whether a Matter is *res judicata* or is an abuse of Court process or has no merit or is indeed against public policy is the preserve of the Court and not of the Second Deputy Speaker of the National Assembly.
- 6.30 Thus, by proceeding to make the Ruling on 3rd July, 2024 and communicating to the Electoral Commission that a vacancy had occurred in the respective Constituencies represented by the Applicants when he was well aware of an active Matter before Court, the Second Deputy Speaker did so without jurisdiction as the Matter was *sub judice*. I am fortified in this view by the holding in the already cited case of **Chishimba**

Kambwili v The Attorney General⁽⁶⁾ wherein the Constitutional Court stated, *inter alia*, that:

“since the issue was already pending determination in the Courts of law, the Speaker by proceeding as he did, fell foul of the sub judice rule.”

6.31 Consequently, I find that the Second Deputy Speaker’s decision-making process was marred with irrationality; it was *ultra vires* his mandate and he fell foul of the *sub judice* rule as he usurped the authority of the Court to determine whether or not there was a Matter properly before Court in relation to the Applicants challenging their expulsions from their Party.

6.32 Based on the foregoing finding, I find it otiose to delve into whether or not there was compliance with Parliamentary procedure as contained in the *Standing Orders* the National Assembly of Zambia, precedence and custom or whether there was an alternative remedy available to the Applicants.

7. CONCLUSION

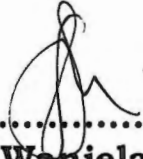
7.1 In sum total, I find that the decision of the Second Deputy Speaker of the National Assembly of Zambia to declare the seats vacant was *ultra vires*/without jurisdiction and irrational.

7.2 Consequently, the Applicants are hereby granted the Order of Certiorari and the decision of the

Second Deputy Speaker to declare the seats held by the Applicants vacant is hereby quashed.

7.3 Costs are for the Applicants to be taxed in default of agreement. Leave to appeal is granted.

Delivered at Lusaka this 23rd day of October, 2024



.....
S.M. Wanjelani
JUDGE