

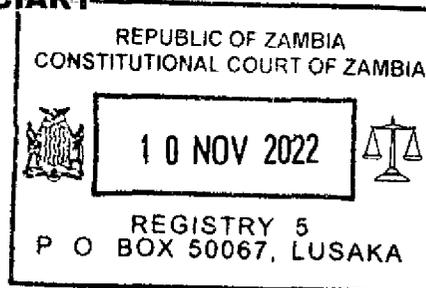
IN THE CONSTITUTIONAL COURT OF ZAMBIA 2022/CCZ/0011
HOLDEN AT NDOLA
(CONSTITUTIONAL JURISDICTION)

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLES
122(1)(2) AND 160 OF THE CONSTITUTION OF ZAMBIA**

**IN THE MATTER OF: INTERFERING WITH THE INDEPENDENCE OF THE
JUDICIARY**

BETWEEN:

**CLARENCE MWANZA
AND
ATTORNEY GENERAL**



PETITIONER

RESPONDENT

**CORAM: Mulonda, Mulenga and Mulongoti, JJC, on 11th October, 2022 and
on 10th November, 2022**

For the Petitioner: In Person

**For the Respondent: Mr. F. Mwale, Principal State Advocate and Ms. A. Chisonga,
Senior State Advocate, Attorney General's Chambers**

J U D G M E N T

Mulenga, JC delivered the Judgment of the Court.

Case cited:

1. Zambia Revenue Authority v Hightech Trading Company SCZ Judgment No. 40 of 2000

Legislation referred to:

- 1. The Constitution of Zambia Chapter 1 of the Laws of Zambia as amended to the Constitution of Zambia (Amendment) Act No. 2 of 2016**
- 2. Intestate Succession Act Chapter 59 of the Laws of Zambia**

Works referred to:

- 1. Rules of the Supreme Court, 1999 Edition (White book)**

Introduction

(1) The Petitioner, Clarence Mwanza, in his Petition alleges contravention of Articles 122 (1) and (2) and 160 of the Constitution by the Judiciary arising from the refusal by Judiciary staff at Kitwe High Court to pay out the money paid into court under cause No. 2002/HK/533. That the refusal defied an order of the Deputy Registrar and thus contravened the Constitution.

(2) The Respondent denies the allegations and assert that the Judiciary staff were merely following the prescriptions of the Intestate Succession Act when they so refused to pay out notwithstanding an Order by the Deputy Registrar that the money was to be paid out to the Petitioner. That this was because his letters of appointment as administrator had been revoked at the time.

Petitioner's case

(3) In the Petition and the affidavit verifying facts, the Petitioner asserts that his late father, Mr. Josias Mwanza, had secured a Judgment under cause No. 2002/HK/533 against Mufulira Municipal Council for an illegal eviction from house No. R.142 Kamuchanga in Mufulira. A Ruling on assessment of damages collectively suffered by the family was delivered on 6th March, 2008. Mufulira Municipal Council made payment into court of a sum of K65,000.00, in satisfaction of the Ruling on assessment of damages.

(4) Prior to his father's death, the Petitioner commenced an action in the Ndola High Court under cause No. 2016/HN/034 claiming the equitable relief of constructive trust for himself and other family members in relation to the damages that were assessed under cause No. 2002/HK/533. On 22nd February, 2016 the Petitioner obtained a Judgment in default against his father declaring that the damages awarded under cause No. 2002/HK/533 were held in constructive trust for the Petitioner and other members of the family.

(5) The Petitioner later obtained an order of appointment as administrator of the estate of his late father pursuant to section 23 of the Intestate Succession Act Chapter 59 of the Laws of Zambia, which administratorship was limited to administering the damages awarded under cause No. 2002/HK/533.

(6) The Petitioner also obtained an order of payment out of court from the Deputy Registrar on 3rd April, 2018 and the Petitioner sought to secure the payment out of Court. However, the Judiciary staff, namely the Court Clerk and the Assistant Registrar declined to release the funds on the basis that the Petitioner's order of appointment as administrator had been revoked by the Ndola High Court. The Petitioner later approached the Judge-in-Charge at Kitwe High Court who was also of the position that in the absence of the letters of administration, the Petitioner was not the right person to receive the funds.

(7) Based on this, the Petitioner claims the following reliefs:

- 1. A declaration that the action by the Respondent of refusing to obey the Order issued by the Deputy Registrar on 3rd April, 2018 under cause No.**

- 2002/HK/533, on the basis that the appointment of the Petitioner as the administrator of the estate of the late Josias Mwanza has been revoked is illegal;**
- 2. A declaration that the decision made by Judge Charles Chanda that the Administrator of the estate of the late Josias Mwanza be appointed to whom the Respondent must surrender the property arising from the Judgments or Orders made by the Court under cause No.2002/HK/533 is illegal;**
 - 3. A declaration that the Petitioner has a right to enforce against the Mfulira Municipal Council, the Judgment or Order obtained against the Council under cause No. 2002/HK/533, as required by Article 160 of the Constitution;**
 - 4. A declaration that the Respondent cannot and should not by law accept credentials from the Administrator of Estate of the late Josias Mwanza for the purpose of administering the properties under cause No. 2002/HK/533 as they are being administered by the Petitioner as trust properties;**
 - 5. Damages for having wrongly withheld the K65,000.00 from the Petitioner;**
 - 6. An order of mandamus directed to and to compel the Permanent Secretary of the Ministry responsible for finance to pay interest on the sum of K65,000.00 from 3rd April 2018 to 15th April, 2022;**
 - 7. An Order that costs for the Petition be borne by the Respondent; and**
 - 8. Any other reliefs.**

(8) In the skeleton arguments in support of the Petition, the Petitioner highlighted the provisions of Articles 122 (1) (2) and 160 of the Constitution. The Petitioner contended that the actions by the Court Clerk, Assistant Registrar and Judge-in-Charge-Kitwe in refusing to issue payment to him on the basis that his letters of administration had been revoked contravened Article 122 of the Constitution as the three disregarded the Order made by the Deputy Registrar on 3rd April, 2018 directing that the funds were to be paid out to the Petitioner.

(9) The Petitioner further argued that all these actions denied him the equitable right to enforce the Judgment under cause No. 2002/HK/533 and were thus in breach of Article 160 of the Constitution.

(10) He thus prayed that the reliefs be granted.

Respondent's case

(11) The Respondent, in the Answer and affidavit in opposition, denied the alleged contravention. It was averred that at the time the Petitioner sought to have the funds paid out of court, the High Court at Ndola had revoked the Petitioner's appointment as Administrator on 9th May, 2017 under Cause No. 2017/HN/047, hence the refusal by the Kitwe High Court to pay at that time.

(12) The Respondent further stated that as of 22nd April, 2022, the funds subject of the suit had since been paid out to the Petitioner as per notice of payment out of court exhibited as "EB3".

(13) In the skeleton arguments, the Respondent contended that the Petitioner had misunderstood the import of Article 122 as it relates to functional independence of the Judiciary against interference from outside of the Judiciary. That the decision to refuse to pay out was anchored on sections 21 and 24 of the Intestate Succession Act which require that one should have valid letters of administration before payment could be made to them. That it was not in dispute that the Petitioner's administratorship had been revoked by the Ndola High court at the time. It was thus the Respondent's submission that all the actions taken by the Judiciary staff were within the law. It was reiterated that the Petitioner only had the right to receive the payment out of Court while he had valid letters of administration.

(14) As regards the alleged contravention of Article 160 of the Constitution, the Respondent argued that the allegation was unfounded

seeing as there was no need to enforce the Judgment against Mufulira Municipal Council because all the monies due were already paid into court in satisfaction of the Judgment. Hence, that the refusal to pay out did not interfere with the enforcement of the Judgment.

(15) The Respondent further submitted that the money having been lawfully withheld meant that the Respondent was not entitled to damages and interest sought in the Petition. With specific reference to interest, the Respondent cited the case of **Zambia Revenue Authority v Hightech Trading Company¹** to argue that monies paid into court do not earn interest.

(16) The Respondent urged us to dismiss the Petition with costs.

(17) At the hearing, both parties reiterated their arguments. Further, Mr. Mwale, the Principal State Advocate, added that the Petitioner should be condemned in costs because he commenced this action on 9th June, 2022 after he was paid on 22nd April, 2022.

Determination

(18) We have considered the Petition, Answer, affidavits and arguments advanced by both parties. The Petition alleges contravention of Articles 122 and 160 of the Constitution. The factual basis of the allegation is not in dispute.

(19) This is essentially that the Petitioner sometime after 3rd April, 2018, sought to have access to money paid into court by Mufulira Municipal Council under cause 2002/HK/533, an action successfully brought by his

deceased father in respect of an illegal eviction. However, when he approached the High Court at Kitwe to have the money paid to him pursuant to the Deputy Registrar's order, his appointment as Administrator of the estate of his late father with regard to the compensatory damages had since been revoked. It was on this basis that the Judiciary staff refused to pay out the money to him at the time. As at the filing of the Petition herein, the Petitioner had since been paid the sum due.

(20) The Petitioner contended that the refusal to pay was in defiance of Deputy Registrar's Order and amounted to an interference with the judicial function of the Deputy Registrar. Further, that the refusal also hindered the Petitioner from enforcing the judgment against Mufulira Municipal Council.

(21) The Respondent on the other hand contended that the Judiciary staff were merely following the law to the letter when they refused to pay out due to the revoked letters of administration. Further, that the Petitioner had since received the funds subject of the Petition.

(22) The Petitioner has alleged contravention of Articles 122 and 160 of the Constitution based on the Respondent's refusal to pay out of the said funds to him following the Deputy Registrar's Order. The issue thus is whether this amounted to contravention of Articles 122 and 160 of the Constitution.

(23) Article 122 (1) and (2) of the Constitution provides that-

(1) In the exercise of the judicial authority, the Judiciary shall be subject only to this Constitution and the law and not be subject to the control or direction of a person or an authority.

(2) A person and a person holding a public office shall not interfere with the performance of a judicial function by a judge or judicial officer.

(24) This Article enshrines judicial independence and proscribes interfering with the manner in which a Judge or Judicial Officer performs their judicial functions. The actions envisaged in Article 122 include actions that would impede the performance of judicial functions as sanctioned by the Constitution.

(25) This is not what has been shown to be the case in this matter. There is no evidence that the Judiciary staff interfered with the performance of judicial functions by the Deputy Registrar. The refusal to honour the order of the Deputy Registrar was based on the law, in particular, the Intestate Succession Act, which required the Petitioner to have valid letters of administration before money could be paid to him in light of the fact that his father was since deceased. Therefore, the refusal did not amount to interference with the judicial functions of the Deputy Registrar.

(26) The Petitioner also alleged that there was contravention of Article 160 of the Constitution which provides as follows:

A person who obtains a judgment against a local authority may enforce the judgment against the local authority after one year from the date of delivery of the judgment.

(27) Article 160 provides for enforcement of a judgment against a local authority after one year of obtaining the judgment. In this case, the Petitioner was not seeking to enforce the judgment against the local authority. Therefore, the alleged contravention of Article 160 also lacks merit for the reason that since the money had already been paid into court by Mufulira Municipal Council it followed that there was nothing to enforce against the Council pursuant to Article 160 of the Constitution. Thus, it is misconceived to argue that the refusal to pay out by the Kitwe High Court denied the Respondent his right to enforce the Judgment under cause No. 2002/HK/533.

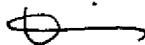
(28) In light of what has been discussed above, the Petitioner has not proved any constitutional violation or contravention. The Petition thus lacks merit and fails. Consequently the reliefs sought cannot be granted.

(29) The petition is accordingly dismissed.

(30) Each party is to bear their own costs.



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P. MULONDA
CONSTITUTIONAL COURT JUDGE



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M. S. MULENGA
CONSTITUTIONAL COURT JUDGE



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J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE