ZAMBIA DEMOCRATIC CONGRESS *v* ATTORNEY GENERAL

Suppreme Court
Bweupe, D. C./ J., Sakala and Chaila, JJS.
11th November, 1999 and 13th January, 2000.
(SCZ Judgment No. 37 of 1999.)

Flynote

Constitutional Law – Constitution – Amendment of – Decision of President and Cabinet – Whether subject to judicial review.
Constitutional Law – Constitution – Alteration – Power of Parliament to alter Constitution.

Headnote

This appeal is against the judgment of the High Court dismissing the appellant's application for judicial review. The original application for judicial review challenged the decision by the President and his Cabinet to amend the present Constitution in the manner suggested in Constitution of Zambia (Amendment) Bill Number 17 of 1996, published in the government gazette as required by Article 79 of the Constitution, in that the said change sought to alter or destroy the basic structure or framework of the Constitution.

Prior to the hearing of the application, the appellant applied for an amendment. The amended application sought as the main relief, for an order of certiorari to remove into the High Court for the purpose of quashing the Constitution of Zambia (Amendment) Act Number 18, of 1996, on the grounds that the amendment of the Constitution of 1991, as provided for in the Constitution of Zambia (Amendment) Act Number 18, of 1996, is ultra vires, Article 79 of the Constitution, in that the said Act has altered or destroyed the basic structure of the Constitution.

Held:
(i) The Constitution of Zambia itself gives parliament powers to make laws. Parliament cannot be equated to an inferior tribunal or body when it is exercising its legislative powers, although in appropriate cases, actions but not by judicial review, can be commenced against it.

(ii) The powers, jurisdiction, and competence of parliament to alter the constitution of Zambia are extensive provided that it adheres to the provisions of Article 79 of the Constitution. Article 79 limits the powers of parliament only in relation to Article 79 itself and to Chapter III of the Constitution relating to fundamental rights and freedoms of the individual.

Legislation referred to:

Constitution of Zambia Cap. 1, Article 28 and 79.

Cases referred to:

Nkumbula v *Attorney General* (1972) Z.R. 204.
Patel v *Attorney General* (1969) Z.R.97.
Chitala v *Attorney General* (1995-1997) Z.R. 91.
Sripadgalavaru v *State of Kerala* [1973] SCR 1973, Supp.
Chief Constable of North Wales Police v *Evans* [1982] 1W.L.R.1155 at 1160; [1982] 3 ALL E.R. 141 at 143

J. Sangwa of Simeza Sangwa Associates for the appellant.
D.K. Kasote - Principal State Advocate for the respondent.

Judgment

SAKALA J.S. delivered judgment of the court.

This appeal, according to the Notice and Memorandum of appeal, is against the whole judgment of the High Court delivered on 27th September 1996, dismissing the appellant's application for judicial review.

The relevant history of the appeal is that on 26th April 1996, the applicant obtained leave to apply for judicial review claiming the following reliefs:

An order of certiorari to remove into the High Court for the purpose of quashing the decision by the President and his Cabinet to amend the present Constitution in the manner suggested in the Constitution of Zambia (Amendment) Bill No. 17 of 1996, published in the Government Gazette as required by Article 79(2)(a) on 23rd February, 1996.

Further, or in the alternative, an order of prohibition prohibiting the President, Cabinet or the National Assembly from proceeding with the consideration, discussion, debate or the enactment of the said Bill into law.

A request that leave granted should operate as a stay of proceedings to which the application related was refused. The applicant, unsuccessfully, appealed to this court against the High Court's refusal to order a stay. The reliefs were sought on the following grounds:-The decision by the President and his Cabinet to amend the present Constitution in the manner suggested in the Constitution of Zambia (Amendment) Bill No. 17 of 1996 published in the Government Gazette as required by Article 79(2) *(a)* on 23rd February 1996, is ultra vires Article 79 of the Constitution in that the said changes seek to alter or destroy the basic structure or framework of the present Constitution. In particular:

(a) The proposed amendment to the Preamble contained in the Bill will alter the secular character of the present Constitution hence alter the basic structure or feature of the Constitution;

(b) The proposed amendment contained in Article 91(4)*(f)* of the Bill to the effect that presumptive constitutionality shall be accorded to legislative Acts and no judicial inquiry into the legislative motives or into the regularity of the legislative process shall be employed in effecting the rebuttal of such a presumption, will undermine the idea of judicial review and the concept of separation of powers and checks and balances which are the basic features or structures of the present Constitution;

(c) The proposed amendment contained in Articles 34(3)*(b)* and 35(2) of the Bill will bar persons qualified to stand for election as President of the Republic and deny them

the right to participate fully without hindrance in the affairs of government and shaping the destiny of the country and undermine democracy and free and fair elections which are the basic features of the present Constitution;

(d) The proposed amendment in Article 98(5) of the Bill will undermine the independence of the judiciary and the idea of separation of powers and checks and balances which make up the basic structure of the present Constitution.

Before the application could be heard, the applicant successfully applied for an amendment. The amended application sought, as the main relief, for an order of certiorari to remove into the High Court for the purpose of quashing the Constitution of Zambia (Amendment) Act No. 18 of 1996 on the following grounds:-

The amendment of the Constitution of 1991 as provided for in the Constitution of Zambia (Amendment) Act No. 18 of 1996 is ultra vires Article 79 of the Constitution in that the said Act has altered or destroyed the basic structure or framework of the Constitution of 1991. In particular:

(a) The amendment to the preamble has altered the secular character of the Constitution of 1991 hence altered the basic structure or feature of the Constitution;

(b) The amendments contained in Articles 34(3) *(b)* and 35(2) of the Constitution (Amendment) Act bar persons qualified to stand for election as President of the Republic under the 1991 Constitution and deny them the right to participate fully without hindrance in the affairs of government and shaping the destiny of the country and undermine democracy and free and fair elections which are the basic features of the constitution of 1991.

Further, or in the alternative, the amendment is ultra vires Articles 79(3) of the Constitution as it violates the basic and fundamental rights protected under Chapter III of the Constitution of Zambia Act No. 1 of 1991.

These amendments were made in the face of very strong objections from the respondent that the amendments were introducing a completely new case. We tend to agree that on very careful scrutiny, the amendments suggest a new cause.

We have deliberately set out the history of this appeal, simply to demonstrate whether the procedure adopted was correct and whether there was a clear and sustainable cause of action at law as opposed to morality and politics which, as the learned trial judge observed, is not the court's domain. It is, however, interesting to note from the record that the learned trial judge in the proceedings for granting leave, was alive to the Court of Appeal decision in the case of *Nkumbula v Attorney-General(1),* in which that court clearly held that Article 28(1) of the Constitution of Zambia has no application to proposed legislation. The learned trial judge in the application for leave to apply for judicial review correctly, in our view, observed that the application was impeaching the National Assembly from going ahead with the debates on the proposed legislation. The learned trial judge categorically stated that: "this is untenable in this jurisdiction". Yet the court went ahead to hear the application for judicial review in the circumstances which he rightly held to be untenable.

In the *Nkumbula* case (1) the application was commenced by way of a Petition challenging a proposed legislation. In the case of *Patel* v *Attorney-General* (2) the position was settled that by virtue of rule 2 of the Protection of Fundamental Rights Rules, 1969, Statutory

Instrument No. 156 of 1969 an application under Section 28(1) of the Constitution should be made by way of petition. That was a High Court decision. We affirm that position. We are satisfied that the original application for judicial review was in substance challenging a Bill, which was allegedly said to be violating Chapter III of the Constitution relating to fundamental rights while the amended application was also challenging the same Bill which had by the time of the amendment become an Act of Parliament. It would thus appear to us that the amendment to the application was necessitated by the fact that the Bill had then become an Act of Parliament. In Zambia, legislative process or Acts of Parliament cannot be arrested by commencing proceedings for judicial review. On ground of procedure alone, the application was misconceived and ought to have failed *ab initio.*

The appeal before us however was argued on one issue namely; that the court below misdirected itself on a point of law in its interpretation of the provisions of Article 79 of the Constitution and, in particular, the meaning of the word *"alteration"* and the holding that the Constitution (Amendment) Act No. 18 of 1996 was intra-vires Article 79 of the Constitution. This issue arose from one of the grounds in the application on which the relief was sought which read:- *"Further, or in the alternative, the amendment is intra-vires Article 79 (3) of the Constitution as it violates the basic and fundamental rights protected under Chapter III of the Constitution of Zambia Act No. 1 of 1991."*

For the fact that the application was attacking an Act of Parliament on the ground that it violated Chapter III of the Constitution relating to Fundamental rights, we are satisfied that the application was commenced by a wrong procedure and that in our jurisdiction the application was untenable. This is so because the very Order 53/14/19 of the 1999 edition of the White Book does not suggest that the remedy of judicial review is concerned with reviewing the legislative process or Acts of Parliament. The Order sets out the nature and scope of judicial review in the following terms:-

"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". "It is important to remember in every case that the purpose of (the remedy of judicial review) is it to ensure that the individual is given fair treatment by the authority to which he has been subjected and that is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question" (Chief Constable of North Wales Police *v* Evans (*5)*, per Lord Hailsham L.C).

Thus, a decision of an inferior court or a public authority may be quashed (by an order of certiorari made on an application for judicial review) where that court or authority acted without jurisdiction or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there is an error of law on the face of the record, or the decision is unreasonable in the Wednesbury sense (see para. 53/14/27). The court will not, however, on a judicial review application act as a *"court of appeal"* from the body concerned; nor will the court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction, or the decision is Wednesbury unreasonable. The function of the court is to see that lawful authority is not abused by unfair treatment. If the court were to attempt itself the task entrusted to that authority by the law, the court would, under the guise of preventing the abuse of power, be guilty itself of usurping power (*Chief Constable of North Wales Police* v *Evans* (5), per Lord Brightman) That applies, whether or not there is some avenue of appeal against the decision on the merits. If there is no avenue of appeal on the merits, it follows that the decision of the body concerned is meant to be final, provided that the decision-making process was properly carried out".

In *Derrick Chitala* v *Attorney-General (3)* we explained the general proposition in judicial review in the following terms:- *"After all, since Ridge v Baldwin (1) the distinction between judicial and administrative activities has been swept away and as a general proposition judicial review now lies against inferior courts and tribunals and against any persons or bodies which perform public duties or functions."*

The Constitution of Zambia itself gives Parliament powers to make laws. By no stretch of any imagination can our Parliament be equated as an inferior tribunal or body when it is exercising its legislative powers although in appropriate cases, actions, but not by judicial review, can be commenced against it. For instance, under the reference procedure of a Bill to a tribunal under the provisions of Article 27 and under the provisions of Article 28 of the Constitution in relation to protective provisions.

The foregoing discussion settles the outcome of this appeal. But the appeal has raised arguments of public importance which though academic in nature, need to be briefly addressed. Before we deal with those arguments we wish to make certain observations. According to the notice, the applicant was the Zambia Democratic Congress (ZDC), a political party constituted pursuant to the provisions of the Societies Act. The affidavit verifying the facts relied on was sworn by one Derrick Chitala, the General-Secretary of the Zambia Democratic Congress. It is now a notorious fact from what has been publicly published in the media that the Zambia Democratic Congress is no longer in existence and that Mr. Derrick Chitala, one of the originators of the application, has since rejoined the ruling Party. We take judicial notice of these notorious facts. This appeal in our view is certainly academic. As a matter of practice, this court disapproves being engaged in academic exercises. But for the reason that some of the arguments raise constitutional issues of public interest, we propose to examine some of the arguments.

The learned trial judge in dealing with the application before him identified and considered the following issues:- *"the powers, jurisdiction and competence of Parliament to alter the Constitution as it did through the Constitution of Zambia (Amendment) Act No. 18 of 1996; whether Parliament complied with the Provisions of Article 79 in enacting the Constitution of Zambia*In Zambia, legislative process or Acts of Parliament cannot be arrested by commencing proceedings for judicial review. On ground of procedure alone, the application was misconceived and ought to have failed *ab initio.*

The appeal before us however was argued on one issue namely; that the court below misdirected itself on a point of law in its interpretation of the provisions of Article 79 of the Constitution and, in particular, the meaning of the word *"alteration"* and the holding that the Constitution (Amendment) Act No. 18 of 1996 was intra-vires Article 79 of the Constitution. This issue arose from one of the grounds in the application on which the relief was sought which read:- *"Further, or in the alternative, the amendment is intra-vires Article 79 (3) of the Constitution as it violates the basic and fundamental rights protected under Chapter III of the Constitution of Zambia Act No. 1 of 1991."*

For the fact that the application was attacking an Act of Parliament on the ground that it violated Chapter III of the Constitution relating to Fundamental rights, we are satisfied that the application was commenced by a wrong procedure and that in our jurisdiction the application was untenable. This is so because the very Order 53/14/19 of the 1999 edition of the White Book does not suggest that the remedy of judicial review is concerned with reviewing the legislative process or Acts of Parliament. The Order sets out the nature and scope of judicial review in the following terms:-

"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". "It is important to remember in every case that the purpose of (the remedy of judicial review) is it to ensure that the individual is given fair treatment by the authority to which he has been subjected and that is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question" (Chief Constable of North Wales Police *v* Evans (*5)*, per Lord Hailsham L.C).

Thus, a decision of an inferior court or a public authority may be quashed (by an order of certiorari made on an application for judicial review) where that court or authority acted without jurisdiction or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there is an error of law on the face of the record, or the decision is unreasonable in the Wednesbury sense (see para. 53/14/27). The court will not, however, on a judicial review application act as a *"court of appeal"* from the body concerned; nor will the court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction, or the decision is Wednesbury unreasonable. The function of the court is to see that lawful authority is not abused by unfair treatment. If the court were to attempt itself the task entrusted to that authority by the law, the court would, under the guise of preventing the abuse of power, be guilty itself of usurping power (*Chief Constable of North Wales Police* v *Evans* (5), per Lord Brightman) That applies, whether or not there is some avenue of appeal against the decision on the merits. If there is no avenue of appeal on the merits, it follows that the decision of the body concerned is meant to be final, provided that the decision-making process was properly carried out".

In *Derrick Chitala* v *Attorney-General (3)* we explained the general proposition in judicial review in the following terms:- *"After all, since Ridge v Baldwin (1) the distinction between judicial and administrative activities has been swept away and as a general proposition judicial review now lies against inferior courts and tribunals and against any persons or bodies which perform public duties or functions."*

The Constitution of Zambia itself gives Parliament powers to make laws. By no stretch of any imagination can our Parliament be equated as an inferior tribunal or body when it is exercising its legislative powers although in appropriate cases, actions, but not by judicial review, can be commenced against it. For instance, under the reference procedure of a Bill to a tribunal under the provisions of Article 27 and under the provisions of Article 28 of the Constitution in relation to protective provisions.

The foregoing discussion settles the outcome of this appeal. But the appeal has raised arguments of public importance which though academic in nature, need to be briefly addressed. Before we deal with those arguments we wish to make certain observations. According to the notice, the applicant was the Zambia Democratic Congress (ZDC), a political party constituted pursuant to the provisions of the Societies Act. The affidavit verifying the facts relied on was sworn by one Derrick Chitala, the General-Secretary of the Zambia Democratic Congress. It is now a notorious fact from what has been publicly published in the media that the Zambia Democratic Congress is no longer in existence and that Mr. Derrick Chitala, one of the originators of the application, has since rejoined the ruling Party. We take judicial notice of these notorious facts. This appeal in our view is certainly academic. As a matter of practice, this court disapproves being engaged in academic exercises. But for the reason that some of the arguments raise constitutional issues of public interest, we propose to examine some of the arguments.

The learned trial judge in dealing with the application before him identified and considered

the following issues:- *"the powers, jurisdiction and competence of Parliament to alter the Constitution as it did through the Constitution of Zambia (Amendment) Act No. 18 of 1996; whether Parliament complied with the Provisions of Article 79 in enacting the Constitution of Zambia (Amendment) Act No. 18 of 1996; whether the Constitution of Zambia (Amendment) Act No. 18 of 1996 was ultra vires Article 79 of the Constitution of Zambia 1991; and whether Chapter III of the Constitution of Zambia 1991 on the Protection of Fundamental Rights and Freedoms of the Individual had been affected by any of the amendments complained of by the applicant."*

The learned trial judge noted that all these issues hinged on the construction or interpretation of Article 79 and the provisions under Chapter 3 of the Constitution of Zambia 1991 vis-a-vis the Constitution of Zambia (Amendment) Act No. 18 of 1996. He examined the whole of Article 79. He found that it deals with the alteration of the Constitution. It gives Parliament power, jurisdiction and competence to alter or amend the Constitution or the Constitution Act of 1991. The learned trial judge found that the language of the Article needed no aid to its construction or interpretation of the words used. He found that counsel's arguments that the Constitution (Amendment) Act of 1991 abrogated or destroyed the basic features, character and frame-work of the Constitution of Zambia 1991 had no basis in law.

The learned trial judge considered the Indian case of *Sripadgalavaru* v *State of Kerala (4)* in which the Supreme Court of India interpreted the word "Amendment" as used in Article 368 of the Indian Constitution. He found that the two Articles served the same purpose namely, alteration or amendment of the Constitution but that the wording and the procedures laid down to alter or amend are different and distinct from each other. He distinguished the Indian case. He considered the history of the enactment of the Indian Constitution. He noted that it was clearly different from that of the Zambian Constitution from its inception in October 1964 to date.

While the Indian Constitution provided for a Constituent Assembly, the Zambian constitution provided for a Referendum. The learned trial judge concluded his analysis of the provisions in the two constitutions by observing that Parliament in Zambia has extensive powers to alter or amend the Constitution once it complies with Article 79. The court concluded that the Constitution of Zambia (Amendment) Act No. 18 of 1996, is not ultra-vires Article 79 of Constitution of Zambia, 1991.

Mr. Sangwa filed very detailed heads of arguments based on the ground: that the court below misdirected itself on a point of law in its interpretation of the provisions of Article 79 and in particular the meaning of the word 'alteration' and the subsequent holding that the Constitution (Amendment) Act No. 18 of 1999 is not ultra-vires Article 79 of the Constitution. Mr Sangwa specifically attacked part of the learned trial judge's judgment were it states: *"Parliament in the Zambian Constitution means the National Assembly and the President.*

Its powers, jurisdiction and competence to alter the constitution of Zambia are extensive provided Parliament adheres to the provisions of Article 79. This Article limits the powers of Parliament with regard to Article 79 and Chapter 3 of the Constitution of Zambia. If Parliament can amass the required majority and the Party in Government can get the necessary and stipulated majority in a referendum under Article 79(3), Parliament's limitations become a theoretical postulate rather than a reality. – The alteration of the Zambian constitutions 1964, 1973 and 1991 and now the 1996 depend on who controls the majority in Parliament and in the population of eligible voters for the referendum.

The entrenched provisions can be altered. The theory of basic structure or framework does not exist in Zambia. Until such time that the electorate decides to vote in a party into

government that will effect alterations to the constitution that the applicant has in mind, the whole idea cannot be achieved under the present constitution or indeed under the 1991. The answer lies in politics rather than under the law. The court cannot dig into and delve in to that domain. It is a political question."

The gist of the attack is that although Parliament is empowered to *"alter"* the Constitution, it is not empowered to abrogate or repeal the Constitution and a new one substituted. According to Mr Sangwa the expression *"alteration of this constitution"* does not include a revision of the whole constitution. He submitted that the court failed to consider the meaning of the word *"alteration"* as used in Article 79 of the Zambian Constitution in comparison with the operative word "amendment" in Article 368 of the Indian Constitution.

Mr. Sangwa cited numerous authorities in support of his submissions. He particularly urged us to read the *Kerala case.*

We have considered the detailed heads of arguments by counsel. Mr Sangwa's submissions have force in reality in that only Part III of the 1991 Constitution survived repeal. Every other part, including the Preamble, was repealed and then replaced. As a matter of fact, the last four parts of the 1991 Constitution (Parts VI, VII, VIII and IX) were repealed and nine parts (part VI to XIV) substituted therefore. Thus, whereas the original 1991 Constitution had nine parts, its amended version has fourteen. However, in legal theory, the government did not abrogate, but merely amended the 1991 Constitution.

It follows that politics and morality aside, the portion of the judgment the subject of the attack is in legal theory substantially correct. The submissions by Mr Sangwa overlook the history and the reality of the constitutional enactments in Zambia. Apart from the difference in the numbering in different Constitutions, the contents of Article 79 of the Constitution of Zambia have been in existence and used from the Independence Constitution. Thus in reality, Constitutions in Zambia have been written and promulgated by Parliament using the powers under Article 79 after a Constitution Commission has made its findings. Indeed, the history of the Constitutions of Zambia from 1964 to date is different from that of the Indian formula which specifically provides for a Constituent Assembly.The relevant Article 79(1)(2) and (3) of the Zambian Constitution in relation to alteration of the Constitution is couched in the following terms:-

"79(1) Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act.

(2) Subject to clause (3) a bill for the alteration of this Constitution or the Constitution of Zambia Act shall not be passed unless-

(a) not less than thirty days before the first reading of the bill in the National Assembly the text of the bill is published in the Gazette; and

(b) the bill is supported on second and third readings by the votes of not less than two thirds of all members of the Assembly.

(3) A bill for the alteration of part III of this Constitution or of this Article shall not be passed unless before the first reading of the bill in the National Assembly it has been put to a National referendum with or without amendment by not less than fifty percent of persons entitled to be registered as voters for the purposes of Presidential and Parliamentary elections."

The learned trial judge was on firm ground when he held that the powers, jurisdiction and competence of Parliament to alter the Constitution of Zambia are extensive provided that it adheres to the provisions of Article 79. The observation that Article 79 limits the powers of Parliament only in relation to Article 79 itself and to Chapter III of the Constitution of Zambia was also correct. Indeed, the constitutional history of Zambia has shown that the alteration of the Constitution has depended on who controls the majority in Parliament and in the population of eligible voters for the referendum. This means that the entrenched provisions can be altered.

Hence, for the time being the theory of basic structure or framework of the Constitution can only be said to exist in theory.

In the instant case, had the government touched Part III of the Constitution, the entire newly drafted Constitution would have mandatorily been submitted to a nation-wide referendum.

Mr. Sangwa has invited us to also examine the Indian provisions in relation to amendments of the Constitution of India. To complete the comparison, it is therefore imperative to set out those provisions. Article 368 of the Indian Constitution in relation to amendment reads: *"368.(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation, or repeal any provision of this Constitution in accordance with the procedure laid down in this article."*

An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament; and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, (it shall be presented to the President who shall give his assent to the Bill and thereupon) the Constitution shall stand amended in accordance with the terms of the Bill:

(1) Provided that if such amendment seeks to make any change in-

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) chapter IV of part V, Chapter V of Part VI, or Part XI or

(c) any of the lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

The amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those legislatures before the bill making provision for such amendment is presented to the President for assent. *"(2) Nothing in article 13 shall apply to any amendment made under this article (3) No amendment of this Constitution (including the provisions of part III) made or purporting to have been made under this article (whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976) shall be called in question in any court on any ground. (4) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article."*

The learned trial judge cannot be faulted when he found that a comparison of the Indian Article 368 with the Zambian Article 79 shows that they serve a similar purpose, amendment and alteration of the constitution but that the wording and the procedures laid down to amend or to alter are different and distinct from each other. We agree that the case of *Sripadgalavaru v Kerala* (4) s irrelevant and distinguishable.

We are equally satisfied that although the Constitution of Zambia (Amendment) Act No. 18 of 1996 did extensive surgery to the 1991 Constitution, that Constitution is still alive and well.

We also hold that the constitution of Zambia (Amendment) Act No. 18 of 1996 is not ultra-vires Article 79 of the 1991 Constitution. This appeal fails on all the fronts and it is dismissed. For indulging us into an academic exercise we were inclined to award costs against the appellant. But since we have delved into some of the Constitutional matters of public interest we make no order as to costs. Each party shall bear its own costs.

Appeal dismissed.