

CONFIDENTIAL

JUDICIAL COMPLAINTS COMMISSION

IN THE MATTER OF: ARTICLE 1(3), 2, 119, 128,129, 143 AND 144 OF THE CONSTITUTION OF ZAMBIA 1991 AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: SECTION 4(2) AND 8 AND 21 OF THE CONSTITUTIONAL COURT ACT NO. 8 OF 2016

IN THE MATTER OF: SECTION 25 OF THE JUDICIAL CODE OF CONDUCT ACT NO. 13 OF 1999 AS AMENDED BY THE JUDICIAL CODE OF CONDUCT (AMENDMENT) ACT NO. 13 OF 2006

IN THE MATTER OF: ORDER IV AND XV OF THE CONSTITUTIONAL COURT RULES STATUTORY INSTRUMENT NO. 37 OF 2016

IN THE MATTER OF: A COMPLAINT OF ALLEGED INCOMPETENCE, GROSS MISCONDUCT AND WILFUL VIOLATION OF THE CONSTITUTION OF ZAMBIA BY JUDICIAL OFFICERS

BETWEEN:

MOSES KALONDE

COMPLAINANT

AND

HON JUSTICE ANNE M SITALI

1ST RESPONDENT

HON JUSTICE MUNGENI MULENGA

2ND RESPONDENT

HON JUSTICE PALAN MULONDA

3RD RESPONDENT

CORAM : JUDGE PRISCA M. NYAMBE (RTD) SC - CHAIRPERSON
MRS. EVA JHALA – COMMISSIONER
MR. KEPHAS KATONGO – COMMISSIONER



In Attendance: Judge Steven Nyundo (Rtd) by Invitation

For the Complainant Mr. Mehluli Batakathi Malisa of Malisa & Partners
Legal Practitioners

For the Respondents Mr. Sam L. Chisulo, SC of Sam Chisulo and Company

REPORT

1.0 INTRODUCTION

This Report is presented to His Excellency the President of the Republic of Zambia, Mr. Hakainde Hichilema, pursuant to the provisions of Article 144 (1) (2) (3) (4) (5) and (6) of the Constitution of Zambia.

On 23rd September, 2024, we presented to the President our Report on a *prima facie* case wherein we recommended the suspension of Madam Justice Anne Mwewa Sitali, Madam Justice Mugeni Siwale Mulenga and Mr. Justice Palan Mulonda from the performance of the duties of a Judge in terms of Article 144(2) and (3) of the Constitution. His Excellency the President soon thereafter suspended the three Judges as provided for in Article 144 (3) of the Constitution.

This Report should, therefore, be read as one with the aforementioned Report which is attached hereto as Appendix 1.

As obligated by Article 144(4) of the Constitution, the Commission carried out a further hearing to determine whether sufficient reasons exist for the removal of the three Judges on the grounds specified in Articles 141(1)(b) and (c) of the Constitution. The relevant constitutional provisions are reproduced hereunder:

141 (1) A person qualifies for appointment as a judge if that person is of proven integrity and has been a legal practitioner, in the case of-

(b) Constitutional Court, for at least fifteen years and has specialised training or experience in human rights or constitutional law.

143. *A Judge shall be removed from office on the following grounds:*

- (a)
- (b) *incompetence;*
- (c) *gross misconduct; or*
- (d)

Mandate to Receive Complaints

The Commission is mandated to remove a Judge from office on the following grounds –

- Constitution Article 143
- (a) mental or physical.....
 - (b) incompetence;
 - (c) gross misconduct or;
 - (d) bankruptcy.

Code of Conduct Act Section 24(1) The functions of the Commission shall be to-

- (a) receive **any complaint** or **allegation** of misconduct and to investigate **any** complaint or allegation made against a judicial officer;

This provision does not by any express or implied words fetter this power, by words such as "*except that where a case is a subject of estoppel, res judicata etc, it shall not be heard or reopened.* "

2.0 PRELIMINARY HEARING

When the Commission convened on 23rd September, 2024 at 09:30 hours, the Complainant and Counsel were present at the time indicated in the Summonses and were ready to proceed. Counsel for the Respondents arrived late. He apologised for coming late and explained the absence of his clients, saying:

"... we thought My Lady that since our approach to the Commission is that we are saying that you do not have jurisdiction." He indicated his intention to raise preliminary issues.

Although Counsel for the Complainant had not been served with the Notice to Raise Preliminary Issues, having had sight of the same, he was ready to proceed.

Therefore, Respondents' Counsel's application to Raise Preliminary Issues was allowed.

2.1 Preliminary Issues

The Counsel for the Respondents delved into the history of the previous six complaints which were heard in 2016, stating as follows:

"My position is that with that finding of fact, another member of the public, who was so well represented by others, cannot 8 years later come back and present the same complaint before you, and you accept it and you want to have a ruling or to start all over again and go through the same process, it will go against the principles that I have mentioned, the principle of finality. The principle made to avoid double jeopardy to the people affected."

Further, he urged the Commission,

"to consider the timing of this complaint that the Respondents were sitting to consider other political issues of people re-contesting elections. Because of these principles you do not have jurisdiction. That the complaint we have before you today, is improperly before you"

In response, Counsel for the Complainant; stated *inter alia*, that:

"the Respondents have not directed the Commission to any provision of the law which ousts its jurisdiction to hear this complaint, that there is no law that has

been cited to this Commission which specifically robs it of jurisdiction to hear the complaint."

"Secondly, that the Respondents have not in any manner pointed to which portions of the present complaint are similar in terms of the provisions of the law that are under interrogation to those six cases that are mentioned in the Notice of the Preliminary Issues and that the only similarity between the cases that have been mentioned by State Counsel as having been decided by this Commission are the names of the Respondents.

Further that,

*"while predominantly this complaint makes reference to the matter of **Hakainde Hichilema and Another vs Edgar Chagwa Lungu and Others, 2016/CCZ/0031**, the issues that are being raised in the complaint have never been determined anywhere in this country. This present complaint has raised issues of incompetence and misconduct. **The issue of the qualification or training of Judges has never been decided upon by this Commission.** It is actually a new issue. Looking at the cases that are being referred to, the issue before this Commission was never an issue in the six complaints referred to by State Counsel."*

That:

"the issue that is before the Commission is that, the Respondents are being alleged by the Complainant that they have violated or breached Article 129(4) of the Constitution and section 3(4) of the Constitutional Court Act, in that the Respondents, convened a sitting of the Court on a weekend without the presiding officer of the Court in terms of section 3(4) of the Constitutional Court Act. That issue has never been subject to any litigation before this Commission or anywhere else.

Further that:

"estoppel by record cannot be invoked in this case because the issues that are being raised here were not pronounced upon by this Commission. Just the fact that someone has been brought to court in connection with something does not mean that they can never be brought to court over that matter.... example State Counsel alluded to, a case in point is the case of the eligibility of the former Republican President. That case has been heard more than four times, this is the fifth time the Constitutional Court is hearing it. The Court in its latest ruling has indicated that these are not issues that can be settled by preliminary issue but can only be settled at a full trial. Similarly, we would invoke the same principles before this Commission that the issues being raised in this complaint cannot be disposed off by way of summary procedure because they have not been pronounced upon by any tribunal in this country and as such in terms of Article 236(1)(c) and (d), this Commission is bound to investigate the allegation in the complaint on their merit and not by way of summary procedure."

*"Thirdly, the Commission will note from its record and from the preliminary issue raised that, the preliminary issue is essentially the substantive defence by the Respondents. What State Counsel has raised as a preliminary issue is essentially what the Respondents have put as a response to the substantive complaint save that **they also added the issue of educational qualifications which shows that this is actually a different matter.** Since this preliminary issue is anchored on the same arguments and the same propositions, there is nothing that stops this Commission from looking at the complaint by its merits and looking at the responses by its merits and deal with those issues substantively without resorting to summary procedure because the functions of this Commission are spelt out in the Constitution. In response to what State Counsel submitted, we submit that this **Commission should resist the temptation of being dragged***

into making decisions based on sentiments or public opinion. This Commission should be bound or should be guided by what is contained in the law and the facts before it. While issues of public reactions, public opinion are important in terms of public policy, they should not influence the decisions of this Commission which should be based on sound principles of law, and the matters and evidence before it."

He submitted further that:

*"the Complainant is here to raise new issues of fact or different factual situations,..... the Complainant is asking the Commission to look at issues of judicial misconduct and judicial incompetence from an angle that this Commission has never been invited to look at before..... the Commission cannot wash its hands and close its doors to any member of the public who makes a complaint. The Commission has no power to close its doors to any member of the public who makes a complaint..... that there is no law that the Respondents are relying on which strips this Commission of jurisdiction to look at this complaint and **investigate whether it discloses a prima facie case**.....the Commission is enjoined by law to investigate this complaint."*

2.2 Decision of the Commission on Preliminary Issue

After listening to submission and arguments from both parties, we found no merit in the Preliminary Issues raised by the Respondents **owing to the fact that this complaint before us has raised new issues which were not raised in the six previous complaints alluded to.** We Affirm the Commission's jurisdiction to hear and determine the complaint before us. Our decision was firmly based on the facts before us as stated in the complaint and submissions made by Counsel for the complainant, the submission made by Counsel for the Respondent, and the principles of laws, that attach to the issue of estoppel which clearly set out the situations when estoppel does not apply, such as, new facts or evidence, per

incuriam principle, serious irregularity or injustice in the procedures i.e inpropriety of procedures.

Therefore, having read the complaint and the responses from the Respondents, we found that a *prima facie* case had been made against the Respondents as per Article 144(2) of the Constitution.

3.0. ORDER STAYING COMMISSION'S PROCEEDINGS

The hearing on 30th September, 2024 did not take off because the 3 Judges who had been suspended applied for Judicial Review and a stay of proceedings before the High Court.

We were, therefore, unable to hold the hearing on that day.

The Judicial Review and Order for stay was discharged on the 11th October, 2024.

The hearings of the Commission began on the 14th October, 2024. A quorum was formed as all 3 Commissioners were present at the hearing. The Respondents together with their Counsel Mr. Sam Chisulo, SC attended the hearing.

The above paragraphs are highlighted to give context to events surrounding the complaint before us.

As obligated by Article 144(2), (3), and (4) of the Constitution, the Judicial Complaints Commission shall where it decides that a *Prima Facie* case has been established, the President shall within seven days from the date of receiving the Report submitted in accordance with clause (2) suspend the judges and inform the Judicial Complaints Commission of the suspension, and the Judicial Complaints Commission shall within thirty days of the judge being suspended from office, hear the matter.

4.0 MAIN HEARING OF THE COMPLAINT

Following the suspension of the Judges by the President on 23rd September, 2024 the Commission scheduled the first hearing on 30th September, 2024 at 09:30 hours.

The Summonses for the hearing were duly served on the parties on 26th August, 2024 with a return date of 23rd September, 2024 at 09:30 hours.

4.1 The Complaint

The Complaint has been brought by one Moses Kalonde, pursuant to Articles 143 and 144 of the Constitution of Zambia Act Chapter 1 of the Laws of Zambia as amended by, Act No. 2 of 2016 and Section 25 of the Judicial Code of Conduct Act No. 13 of 1999 as amended by Act No. 13 of 2006.

The Complainant is a Zambian national with a keen interest in Constitutional matters and is also a Democracy and Governance Activist though **in his evidence viva voce, he stated that he was a businessman.**

Pursuant to Section 25 (1) and (4) of the Judicial Code of Conduct Act, any member of the public who has a complaint against a judicial officer or who alleges or has reasonable grounds to believe that a judicial officer contravened this Act, shall inform the Commission. A complaint can be made orally or in writing. Section 28(1) provides that subject to the other provisions of the Act, the Commission may regulate its own procedures.

In his Complaint Mr. Moses Kalonde, contends that:

"It is a matter of public policy and in the interests of preserving our nation's Constitutional order, that the Commission exercises its powers to rid this court of

this anomaly which resulted in the appointment of unqualified persons as judges. The Complainant reiterates that the three Respondents are not competent to hold office of judges of the Constitutional Court and beseeches the Commission to stem this continued assault on the constitutional order and the integrity of our judicial system.

The Complainant prays that the Commission finds that the three Respondents lack the requisite competence to sit and or hear matters in the Constitutional Court and recommend their removal from the bench on the ground of incompetence."

(paragraphs from the Complaint)

6.5.1 (p12) *"Under the second limb of incompetence the Complainant submits that the Respondents' incompetence in terms of being inadequately trained and thus unqualified for appointment as judges of the Constitutional Court, is reflected by the incompetence and atrocious manner in which they handled the Presidential Petition. The three Respondents displayed an alarming lack of knowledge and skill in the conduct of judicial proceedings culminating in their "Majority Ruling" on the 5th September, 2016. The effect is that the said "Majority Ruling" fell gravely short of the standard of adjudication accustomed to, and expected in our jurisdiction and internationally."*

6.5.3 (p13) *"..... recalling the events that culminated in the 'Majority Ruling' by the three Respondents, the Complainant stated that on Friday the 2nd of September, 2016, the full bench of the Court comprising 5 judges unanimously agreed to adjourn the matter for commencement of trial the following Monday, 5th September, 2016 and went on to give complete Orders For Direction as to how the matter was to be conducted therefrom which was a lawful order of a lawfully constituted court passed after a public hearing. The Complainant argued that the conduct of three Respondent*

following the lawful adjournment of the full court was not only a blatant display of incompetence, but was also a brutal attack on the rule of law alien to our legal order and jurisprudence."

- 6.5.4** *"It is a matter in the public domain,.....that after the Court's Order to adjourn and resume trial on Monday the 5th of September, 2016, there was no other formal sitting of the Court to consider any application or question on the Court's jurisdiction by any of the litigants and there was no application pending ruling by the time of adjournment for the weekend."*

He urges the Commission,

"to take judicial notice of fact, that courts in Zambia do not sit on weekends unless in exceptional circumstances as ordered by the court, and that in this particular instance, there was no order directing that the Court would sit over the weekend."

- 6.5.6** *"Respondents' Majority Ruling without a Formal Application*

Notwithstanding that the full Court had made an Order in open court, the previous Friday, adjourning the matter to Monday 5th September, 2016, the Respondents on the appointed date of commencement of hearings already had a Draft Ruling at 08:00 hours on the appointed day, prompting then Judge President of the Court, Madam Justice Chibomba to state that:

"I must also say from the outset that I have had very little time to read through the Majority Judgement which I was given this morning after 08:00 hours together with the Judgement by Justice Munalula." (See the attached dissenting Judgments of Judges Chibomba and Munalula).

The Complainant submits that a number of key questions arose from this development which ought to be answered by the Respondents to the satisfaction of the Commission, i.e:

- (a) *When, at what time and where did the three Respondents convene a judges' conference to arrive at the "Majority Ruling"?*
- (b) *If such a meeting took place who called for and presided over this meeting and in what context?*
- (c) *Which legal provision empowered the three Judges to overrule an Order made by a full bench sitting in open court?*
- (d) *Pursuant to which provisions was the issue of the jurisdiction of the court re-opened after the court adjourned?*
- (e) *When was the application challenging the jurisdiction of the court to hear the pending petition made, to whom and where?*
- (f) *Friday Ruling made to the full bench and where and when was it heard?*

6.5.3 The Complainant further contends *that,*

"the three Respondents exhibited extreme levels of incompetence rendering them unfit to hold judicial office in the highest court of the land and that the Respondents in their Ruling displayed an intellectual bankruptcy and incompetence confirming a failure to understand and apply the basic rules of litigation."

6.5.6.7 The Complainant further submits,

"that judges are not above the law but are accorded the privilege and considered as custodians of the law. This however does not mean that judges can act on their own caprices, not founded on any law. When judges

act contrary to established law and conduct themselves during judicial proceedings in a manner inconsistent with established rules of law, practices, and principles severely undermine the judicial process."

As Justice Michael Kirby observed:

"It would be corrosive of the Rule of Law, if judges did not themselves conform to and uphold clearly settled rules of law." Lord Denning and Judicial Activism, Denning Law Journal 132.

The other ground pursuant to which the Complainant seeks the Respondents removal from judicial office is that of Gross Misconduct. He quotes the following in relation to his Complaint.

Under Article 266 of the Constitution "gross misconduct" is defined as follows:

- (a) behaviour which brings a public office into disrepute, ridicule or contempt;*
- (b) behaviour that is prejudicial or inimical to the economy or the security of the State;*

Black's Law Dictionary defines **misconduct** as follows:

"Misconduct (17c) A dereliction of duty, unlawful, dishonest or improper behaviour especially by someone in a position of authority or trust."

The Complainant further alleges that the Respondents' actions which led them to convene an illegal judges' conference over a weekend and made the decision to overturn the previous ruling of the full Court is an act of gross misconduct which renders them amenable to removal from office. The Zambian Constitution clearly

provides that gross misconduct is a ground for removal of a judge from office. The Complainant contends that the three Respondents engaged in illegal conduct which demeaned and brought ridicule to the Constitutional Court.

Article 129(4) of the Constitution states that:

(4) Constitutional Court shall be presided over by –

(a) the President of the Constitutional Court;

(b) in the absence of the President of the Constitutional Court, the Deputy President of the Constitutional Court; and

(c) in the absence of the Deputy President of the Constitutional Court, the most senior judge of the Constitutional Court as constituted.

Section 3(4) of the Constitutional Court Act has identical provisions which states as follows:-

(4) The court shall be presided over by –

(a) the President;

(b) in the absence of the President, the Deputy President; and

(c) in the absence of the Deputy President, the most senior judge of the court, as constituted.

5.0. CONSIDERATION AND ANALYSIS OF THE EVIDENCE

5.1 Complainant's Evidence

The complainant's evidence is contained in the complaint received by the Commission dated 27th May, 2024; including the complainant's submissions made at the hearing dated 23rd September, 2024.

5.2 Respondents' Summary of Responses

The Respondents' evidence is as contained in their responses; received by the Commission on 16th August, 2024. The Respondents also gave evidence on oath; and written submissions received on 18th October, 2024.

5.3 Gross Misconduct

A full bench of the Court comprising the three Respondents and Hon. Mrs. Justice Hildah Chibomba then President of the Constitutional Court and Hon. Ms. Justice Munalula then Deputy President of the Constitutional Court, all unanimously agreed on 2nd September to adjourn for commencement of trial the following Monday, 5th September, 2016 and went on to give complete Orders for direction as to how the matter was to be conducted therefrom, which was a lawful order of a lawfully constituted court, passed after a public hearing.

The following Monday, 5th September, 2016 when the Court was supposed to commence the actual hearing of the petition, the Respondents already had a draft Ruling at 08:00 hours.

The Complainant submits that the conduct of the Respondents amounted to gross misconduct and seeks the Respondents' removal from judicial office.

Article 266 defines **Gross Misconduct** as a:

- (a) *behaviour which brings a public office into disrepute, ridicule or contempt;*
- (b) *behaviour that is prejudicial or inimical to the economy or security of the State*

Blacks Law Dictionary defines misconduct as follows:

"Misconduct (17 c) 1, a dereliction of duty, unlawful or, dishonesty or improper behaviour especially by someone in a position of authority or trust....."

Blacks Law Dictionary defines to preside as follows:

*Preside: 1 To be in charge of a formal event, organisation or company **to occupy the place of authority especially as a Judge during a hearing or trial..... to exercise management or control.***

Cambridge English Dictionary defines Incompetence as follows:

Incompetence: Lack of ability, skill or knowledge that is needed to do a job or perform an action correctly or to a satisfactory standard.

(a) Judge Anne M. Sitali's Response was that:

"I wish to state at the outset that following the majority and minority decisions made by the Constitutional Court in the presidential election between Hakainde Hichilema and Geoffrey Bwalya Mwamba vs Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and Attorney General under cause number 2016/CCZ/0031, complaints were filed with the Judicial Complaints Commission against us, the three Judges who rendered the majority judgment and the two Judges who rendered the minority judgments.

The complaints against, regarding the handling of the petition raised issues which were on all fours with the issues which have been raised by Moses Kalonde in the present complaint. Those complaints were heard at a full

hearing on the merits and were conclusively determined by the Commission in line with the mandate under Article 144 of the Constitution in 2017.

This position regarding the determination of the 2016 complaints was acknowledged by the Commission in its letters dated 10th January, 2023 and 1st June, 2023 written by the Commission's Chairperson to Joseph Busenga of which I attach for ease of reference..... (attach letters dated 10 January and 1st June)

To address the recurrent allegation that I am unqualified to hold office as Judge of the Constitutional Court because I did not have the mandatory 15 years of experience as a legal practitioner This was constitutional law practice par excellence(see attached response)

When my experience as a legislative drafter and as an advocate in the Attorney General Chambers are aggregated it is evident that I was amply qualified for appointment as Judge of the Constitutional Court in terms of Article 141(1)(b) of the Constitution.

My experience far exceeded the minimum 15 years of practice as a legal practitioner, stipulated by the Constitution."

Judge Sitali was the single Judge presiding over scheduling the matter for trial and dealt with all interlocutory matters relating to the Petition.

From the record of proceedings, the interlocutory matters continued to be lodged one after another for the entire 14 days. On the 14th day Judge Sitali informed the parties that they were running out of time and they should call their witnesses.

The major concern is that Judge Sitali allowed without restraint or an attempt to ensure effective time allocation setting clear guidelines, for example providing time limits for arguments. In this Judge Sitali failed to manage the process within constitutionally mandated timeframes, potentially violating the Petitioners' rights to a fair and timely hearing.

Judge Sitali showed her incompetence in managing and controlling the proceedings knowing that the Constitution had set time limits within which the Court was to hear a matter under Article 103(2) and thereby delayed the trial of the matter. She should have in this instance given expeditious scheduling orders and limited the number of interlocutory issues and arguments under an efficient motion resolution method. As such, she showed a high level of incompetence as a judge knowing that effective management of interlocutory application within constitutionally mandated timeframes is crucial to ensuring fairness, efficiency and justice.

Whilst we cannot fault a Judge for interpreting a provision of a statute or indeed the Constitution as happened in the case of Article 103, the question which needs an answer is whether Article 103 is absolutely clear and lacks ambiguity, or is it a case of *per incuriam* decision made in ignorance, oversight or error, due to the ambiguity of the Article or collusion rather than a deliberate interpretation of the law thereby failing to consider other crucial Articles of the Constitution such as Article 118(2)(e) which relates to substantive justice which demands that justice shall be administered without undue regard to procedural technicalities and the Bill of rights which provides for the right to be heard, resulting in an unjust decision being made ("error of law" or "judicial error")

Judicial diligence and attention to detail was not executed thoroughly by due consideration to the cohesiveness of the Constitution.

Judge Sitali stated in her *viva voce* evidence, many times, that, " *at least call a witness so that we can start the hearing.*" What does that entail or mean? It seems she knew or ought to have known that thorough consideration was not given on Friday 2nd September, 2024 to hear the Petition.

By understanding *per incuriam* we can identify and address errors in judicial decision making whilst promoting fairness, justice and the rule of law.

The conduct of the Respondents to abandon the decision of the full court on Friday, 2nd September, 2024 clearly frustrated the judicial process. This speaks to the single Judge's lack of skill and management of her Court. As aptly put by Namibian Scholar, Dunia P. Zongwe in an article carried in the SAIPAR LAW Review Journal, "*It is clear that the Constitutional Court of Zambia failed to bring sanity to what was a chaotic process. Litigation in Zambia is judge-driven and the court has a duty to control the courtroom and the proceedings therein. The flip-flopping of court directions worsened the situation and apparently caught Justices Chibomba and Munalula off guard putting them in the embarrassing position of writing a rushed Judgment.*"

By ignoring or failing to appreciate it is a long standing principle of adjudication, that, a full court cannot be reversed by three Judges and also that an order of court remains valid unless vacated or set aside. It follows that a decision by the three Respondents to overrun an order made by the full court is incompetent as it has no legal basis.

As argued by renowned Legal Scholar, Professor Ndulo, "*the Majority Decision is invalid as it was a subversion of the judicial process and therefore the unanimous decision of the court made on 2nd September, 2016 to hear the Petition is still the valid decision of the Court.*" **(Muna Ndulo, The Judicial crisis In Zambia and a flawed election.**

It is not in dispute that there was no application or motion filed by any of the parties requesting the Court to vacate its orders made on Friday the 2nd of September, 2016.

In the common law tradition which Zambia subscribes to, it is not legally tenable for three Judges of a court to make a decision that overrules the full bench of five Judges. In this case the three Respondents could not legally reverse the unanimous decision of the full Court ordering trial to proceed on 5th September, 2016. The majority decision demonstrates judicial incompetence, arbitrariness and complete disregard of the law.

Judges are not above the law but are accorded the privilege and considered as guardians of the law. This does not mean that Judges can act on their own caprices not founded on any law. Therefore, when Judges act contrary to established law and conduct themselves, in judicial proceedings in a manner inconsistent with established rules of law, practices and principles, severely undermine the judicial process and as Justice Michael Kerby observed.

"It would be corrosive of the rule of law, if Judges did not themselves conform to and uphold clearly settled rules of Law."

[Justice Michael Kerby "Lord Denning and Judicial Activism Denning Law Journal, 132.]

The consequences of the Judge's gross misconduct warrant disciplinary action as it delayed the trial of the main matter, resulting in the Petitioners right to be heard being abrogated, which is a grave injustice despite the time constraints. Judges should know that effective court management is crucial to ensuring justice is served in a timely manner. In this respect, Judges must balance efficiency with fairness, whilst respecting the rights of all parties.

The Judge has lost credibility and must be removed from office for gross misconduct.

(b) Judge Mugeni Mulenga's response was that:

"I wish to state that the complaint by Moses Kalonde against myself as part of the majority decision of the panel that presided over the 2016 presidential petition in the case of Hakainde Hichilema and Another vs Edgar Chagwa Lungu and Others – 2016/CCZ/0031 raises the same issues raised by multiple complainants against all the members of the panel in 2016. Those complaints were heard and conclusively determined by the Commission in 2017 as acknowledged in the Commission's letters of 10th January, 2023 and 1st June 2023. The letters are attached for ease of reference" (see responses as attached)

Judge Mulenga played a big role in the conduct of proceedings during the period Friday 2nd September, 2016 to Monday 5th September, 2016. In her *viva voce* evidence, she narrated how she had helped the Judge President to write the ruling made as a full bench on Friday 2nd September, she alleges that the Court had earlier sat as a collegiate decision-making body to discuss the issue of time limits and that the Court would not have jurisdiction over the matter after midnight of that day. She then assisted the President, after their deliberations to actually write the ruling pronouncing that the proceedings had ended due to lack of jurisdiction. She was therefore, surprised when Judge Chibomba read the ruling which had other matters included by the President which were not agreed to, which was that the Court would proceed to hear the Petition on Monday morning, 5th September, 2016.

She stated that the other Judges and herself raised this matter with the Judge President and that the President asked if all of them could write their opinion on the matter of jurisdiction. She testified that armed with her permission she

proceeded on Saturday and Sunday to write the opinion at her home. After she completed it, she consulted Judge Sitali who was also writing an opinion at the same time. She then rang the President to inform her that she had done the opinion which turned out to be the majority judgment.

Judge Chibomba in her *viva voce* testimony, vehemently denied giving such permission to any Judge and was surprised when Judge Mulenga had phone her over the weekend on a matter she had no clue over and told her that the issue would be discussed on the Monday. Judge Chibomba actually used words as, "It is all lies."

Judge Mulenga did not challenge Judge Chibomba or deny that it was all lies but kept insisting that they had discussed the matter.

The Commission had no reason to doubt the testimony of Judge Chibomba therefore the Commission concludes that Judge Mulenga committed perjury by lying on oath, which is a very serious indictment on her character and this is conduct unbecoming of a judicial officer. We believe that no such authority was actually given by the Judge President or the full bench for the 2 Judges to write a Judgment over the weekend when the full bench's decision to proceed to trial on Monday, was never challenged by any party through an application, it being a constitutional matter.

In the case of ***Isaac Mwanza and the Attorney General*** where the Constitutional Court clearly laid down the circumstances in which the mode of communication of proceedings by which the Court is clothed with jurisdiction to interpret the Constitution and further guided that mere submissions by a party on a point of law do not nor did they in any way confer jurisdiction on the Court to interpret a provision of the Constitution in the manner that the Respondents purported to do, when they made the Majority Ruling.

From the stand point of the Commission, the Respondents not only acted in collusion, but also illegally subverted the judicial system, and undermined the Constitutional Order. An Order of a court of competent jurisdiction, is binding on every person and remains valid, unless and until is set aside or vacated by the same court or overruled by an appellate court.

Further the decision to privately write the Judgment over the weekend was fraught with fundamental flaws, as it brings out serious irregularities and injustices in the judicial process, as the parties were never heard on the matter.

The conduct of the Respondent brings her within the ambit of Article 141(1)(b) of the Constitution. The Judge has lost credibility and must be removed from office for gross misconduct.

(c) Judge Palan Mulonda's response was that:

" I wish to state at the outset that following the majority and minority decisions made by the Constitutional Court in the presidential election petition between Hakainde Hichilema and Geoffrey Bwalya Mwamba vs Edgar Chagwa Lungu, Inonge Wina, Electoral Commission of Zambia and Attorney General under cause number 2016/CCZ/0031, complaints were filed with the Judicial Complaints Commission against us the three Judges who rendered the majority judgment and the two Judges who rendered the minority judgments.

The complaints against us, regarding the handling of the petition, raises issues which were on all fours with the issues that have been raised by Moses Kalonde, in the present complaint. Those complaints were heard at a full hearing on the merits and were conclusively determined by the Commission in line with its mandate under Article 144 of the Constitution in 2017. This position regarding the determination of the 2016 complaints

was acknowledged by the Commission in its letters of dated 10 January, 2023 and 1st June, 2023, written by the Commission's Chairperson to Joseph Busenga, copies of which I attach for ease of reference.

As regards the complainant's citation of our recent decision.....under cause number 2023/CCZ/005..... the decision does not in any way support his allegation against me.....

I have specialised training in human rights law at Masters level from the University of Lund, Sweden and experience in constitutional law and human rights acquired during my career under the Attorney-General's chambers. I have also tutored constitutional law and lectured human rights law at the University of Zambia's School of Law."

According to the evidence of Judge Mulonda, he stated that he fell ill after the matter was adjourned on 2nd September, 2016 and that he was not part of the consultations between Judges Sitali and Mugeni over the weekend.

The question is, did Judge Mulonda in any way misconduct himself in the proceedings of 2nd September, 2016?

In siding with Judges Sitali and Mulenga on Monday 5th September, 2016 having been part of the full bench that had decided that the day was for the hearing of the Petition a position which had not been vacated, Judge Palan Mulonda had failed to exercise independent judicious consideration.

Judge Chibomba in her sworn evidence had shown that she never asked any Judge to write an opinion outside the court and she vehemently denied giving permission to Judge Mugeni Mulenga to do an opinion in fact Judge Chibomba said "*it was all lies, when?*"

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From the evidence at the hearing Judge Mulonda said he only knew about the opinion by the two Judges (Mulenga and Sitali) and that of Judge Munalula in the morning of Monday and he failed to exercise judicious consideration by siding with the two Judges when he knew that they were supposed to commence hearing having been part of the full bench that had agreed to commence hearing on Monday.

The Commission is concerned that despite Judge Mulonda having a Masters in Law which includes human right subjects he totally ignored issues arising from the Bill of Rights and substantial justice, which were raised by the Judges Chibomba and Munalula and joined Judges Mulenga and Sitali without first analysing Article 103 with respect to other provisions of the Constitution. He claimed that for him jurisdiction was the paramount consideration.

This demonstrates a form of silent collusion, which is an unspoken, implicit, or covert agreement between individuals or groups to achieve a common goal, often harmful or unlawful, without openly acknowledging or explicitly communicating their intentions. This silent collusion can have far-reaching consequences, and must be taken into account to promote fairness, transparency and accountability. He also disregarded the fact that neither the full bench nor the President gave permission, on Friday, 2nd September, 2016 for anyone to write another Judgment in place of the one read. It was neither sanctioned nor solicited by the full bench.

If Judge Palan Mulonda was acting judiciously he would have, after the three Judgments were read out and debated, analysed them and made a conscious and independent decision, even if it was writing a dissenting Judgment.

The conduct of the Respondent brings her within the ambit of Article 141(1)(b) of the Constitution. The Judge has lost credibility and must be removed from office for gross misconduct.

The Respondents' actions which led them to convene an illegal Judges' conference over a weekend and made the decision to overturn the previous ruling of the full Court is an act of gross misconduct which renders them amenable to removal from office. The Respondents engaged in illegal conduct which demeaned and brought ridicule to the Constitutional Court.

5.4 Incompetence

Pursuant to Article 140 of the Constitution,

"The President shall on the recommendation of the Judicial Service Commission and subject to ratification of the National Assembly, appoint, inter alia, the President of the Constitutional Court, Deputy President of the Constitutional Court and other Judges."

With due regard to Article 140, Parliamentary Select Committee was appointed to scrutinise the Presidential appointments of the appointees at the time, which included the Respondents.

Further, Article 141, on qualification for appointment as a Judge, states:

*141 (1) A person qualifies for appointment as a Judge if that person is of **proven integrity** and has been a legal practitioner in the case of the:*

*(b) Constitutional Court, **for at least fifteen years and has specialised training or experience in human rights or constitutional law;***

5.5 Submissions by Professional Bodies/Stakeholder Institutions to Parliamentary Select Committee

Briefly this is what professional bodies/ stakeholders said about each Respondent.

5.5.1 Judicial Complaints Authority (JCA) (JCC)

(a) Judge Mugeni Siwale-Mulenga

The Judicial Complaints Authority (JCA) as it then was herein after Judicial Complaints Commission (JCC) submitted that **since the nominee had no proven record of constitutional experience or qualification, JCC did not support her appointment.**

(b) Hon. Madam Justice Anne Mwewa-Sitali

The JCC supported her appointment stating that she had a proven track record in constitutional matters having worked as a Legal Aid Counsel, State Advocate, rising to the position of Chief Parliamentary Counsel **prior to being appointed as Permanent Secretary and later as judge of the High Court.**

(c) Judge Palan Mulonda

The JCC noted that he had no experience at the Bar, Bench or in constitutional matters, thus the JCC was not in support of the appointment of the nominee to serve as a Judge of the Constitutional Court.

5.5.2 The Law Association of Zambia (LAZ)

(a) Judge Mugeni Siwale-Mulenga

A review of the nominee's resume established that she was neither specialised nor sufficiently experienced in the area of human rights or constitutional law as envisaged by Article 141 of the Constitution. **Therefore, LAZ did not support the nomination of the nominee as a Judge of the Constitutional Court.**

(b) Judge Anne Mwewa Sitali

The review of the nominee's resume established that she was neither specialised nor sufficiently experienced in the area of human rights and constitutional law as envisaged by the provisions of Article 141 of the Constitution, and did not support her appointment as a Judge of the Constitutional Court.

(c) Judge Palan Mulonda

A review of the nominee's resume established that **although he held a Masters Degree in International Law, specialised in human rights, humanitarian law and international organisations, he was not sufficiently experienced in the area of Human Rights and Constitutional Law as envisaged by the provisions of Article 141 of the Constitution. LAZ therefore did not support his nomination to the Constitutional Court.**

5.5.3 Lack of Requisite Training/ Qualifications

The Constitution prescribes the requisite training and qualifications required for one to be appointed a Judge of the Constitutional Court as follows:

141 (1) A person qualifies for appointment as a Judge if that person is of proven integrity and has been a legal practitioner in the case of the:

(b) *Constitutional Court, for at least fifteen years and has **specialised training or experience in human rights or constitutional law;***

A reading of the provision of the Constitution leads to the inevitable conclusion that for one to be qualified as a Judge of the Constitutional Court the person ought to have practiced as an advocate for a minimum of **fifteen (15) years prior to appointment and not after.** In addition, **that person should have specialised training or experience in human rights law or constitutional law,** again prior to appointment.

This position was fortified by the Constitutional Court in the case of *Isaac Mwanza vs Attorney General* where it stated:

*"It is our considered view that Article 141(b) entails that for one to qualify for appointment as a Constitutional Court Judge that person must possess one of either specialised training in human rights or constitutional law We thus grant the declaration prayed for by the petitioners that qualification for appointment as a Constitutional Court Judge under Article 141(1)(b) of the Constitution **requires one to have specialised training or experience in human rights or constitutional law in addition to the requisite attainment of 15 years as a legal practitioner.**"*

It is noteworthy, Judge Mugeni was part of the Bench that made the above finding.

Further, UNESCO in its Glossary of key terms, 2009 defines "specialised training" as:

*"**Advanced level** of training to broaden specialised knowledge of a particular task, function or aspect of an occupation."*

Black Law Dictionary states:

*"Typically **to qualify as a specialist, a lawyer must meet a specified level of experience, pass an examination and have favourable recommendation from peers**".*

From the above, specialised training in constitutional law or human rights refers to targeted, in-depth education and instruction focussed on the principles, frameworks and practices related to human rights and constitutional law. This type of training is designed to equip individuals with advanced knowledge and constitutional principles in various contexts.

The framers of the Constitution in enacting Article 141 (1)(b), intended that only those individuals equipped with advanced knowledge, skills and practical experience necessary to effectively address and advocate for issues in these fields should be appointed as Judges of the Constitutional Court.

The Commission has considered the Report of the Parliamentary Committee appointed to scrutinise the Presidential appointments of Judges, including the three Respondents. The submission from LAZ is noteworthy and relevant. **LAZ** did not support the appointment of the Respondents and rightly so.

From the authorities cited above, clearly none of the three Respondents qualified for appointment to the office of Constitutional Court Judge and as such are incompetent to hold the office or even to exercise the functions thereof.

The conclusion of the Commission therefore is that the three Respondents do not meet the minimum Constitutional threshold to sit as Judges of the Constitutional Court and are therefore incompetent to preside over any matters filed in that Court.

Further, the fifteen (15) years threshold of requisite experience is experience acquired prior to appointment and not after.

For the avoidance of doubt, the Commission finds that the complaint before it is not similar on all fours as stated by the Respondents with the issues that were raised in the six complaints against the Respondents in 2016.

The three Respondents' incompetence in terms of lack of requisite training and experience brings them under the ambit of Article 143(b) of the Constitution. The Commission therefore finds that all three Respondents are not qualified to be Constitutional Court Judges as per threshold set out in the Constitution and the *Isaac Mwanza case cited above*.

The Commission holds that the Respondents are incompetent to be Judges of a specialized court like the Constitutional Court and as such should be removed from office.

6.0 Management of interlocutory matters

It is clear from the dissenting Judgments from the Judge Chibomba and Justice Munalula that the President of the Court only became aware of the Respondents' "Majority Ruling" on the same morning it was delivered, when she was under the impression that the petition was coming up for hearing as had been ordered when the full court adjourned the previous Friday. If the Court President was herself not aware of the Judgment of the majority until the morning of its rendering, it leads one to the conclusion that the three Respondents separately conferred and contrived to subvert the unanimous decision of the full Court.

In an Article in the SAIPAR LAW Review Journal, Namibian Scholar Dunsu P. Zongwe had this to say:

*"It is clear that the Constitutional Court of Zambia failed to bring sanity to what was a chaotic process. Litigation in Zambia is judge-driven and the court has a duty to control the courtroom and the proceedings therein. **The flip-flopping of court directions worsened the situation and apparently caught Justices Chibomba and Munalula off guard putting them in the embarrassing position of writing a rushed Judgment.**" (Our emphasis).*

Renowned Constitutional Scholar and Cornell University Professor Muna Ndulo stated in an article:

*"I would agree with Professor Hansungule's assessment that the **Zambian Constitutional Court displays unbelievable mediocracy and is an embarrassment to Africa and the rest of the world.** In this article, I argue that the September 5 decision of Justices Sitali, Mulonda and Mulenga to overturn a decision of the full bench was illegal, irregular and unprofessional and has no legal effect."*

Arising from the proceedings in the court on the 2nd September, 2016 and the continued raising of motions from both parties, without any interventions by the Presiding Judge in trying to manage the motions in order to comply with the limitation of time in the Constitution, put the Petitioner in jeopardy as the Petitioner's opportunity to be heard was being nullified, especially the fact that Mr. Sangwa, SC and his team of lawyers asked to recuse themselves and this was allowed, whilst the Respondents' lawyers kept reiterating that the jurisdiction of the Court to hear the matter would expire at midnight. One would ask whether the whole proceedings were being orchestrated to defeat the course of justice in the sense that the proceedings were being played out to ensure expiry of time resulting in the claim that the Court lacks jurisdiction to hear the Petition, thus killing the challenge to nullify the elections.

The Respondents submitted that the full bench adjourned the proceedings to discuss the expiry of time where 2 opinions then arose (page 8) and the President permitted Judge Mulenga to write the ruling of the Court. The question that begs an answer is, having been presented with two opinions (page 8 of submissions) in Chambers, how come they did not come out during the hearing, but instead the ruling read out was to hear the Petition on Monday the 5th September, 2016. This was not disputed, during her *viva voce* testimony. Judge Chibomba called such evidence as lies.

This ruling contradicts the submission made by the Respondents, in totality, including the *viva voce* evidence given by the President of the court, which was to adjourn the matter to Monday to hear the matter and scheduled the way the hearing was to be heard meaning the full bench overruled the question of lack of jurisdiction.

However, on Monday the 5th, after resuming the sitting in court, Judge Chibomba stated that the Court had its own position and allowed Judge Sitali to read the Majority Report, before she read hers. Judge Chibomba actually ceded her authority to Judge Sitali, thereby vacating the ruling made by the full bench on Friday, without addressing that ruling. She then proceeded to read her minority Judgment, thus collapsing the hearing of the entire Petition. This was high **incompetence on the part of the Judge President**, as she lacked the ability or knowledge that was needed to do her duty or take action correctly to satisfy the decision taken on Friday the 2nd of September, 2016. Judge Chibomba did not first read out and deal with the ruling made on the Friday the 2nd of September 2016, and then proceed with the hearing of the Petition. She did not have to consider the opinions made over the weekend which were not sanctioned. The Judge nevertheless allowed the issue of no jurisdiction on the intervention by Mr. Kalaluka. In doing so she failed to interrogate the Constitutional provisions in detail as a collegiate court, that is, the interpretation of Article 103(2) and (3), the Bill of

Rights on the right to be heard and the requirement of the Constitution relating to substantive justice. These were abrogated in a blink of an eye, due to her lack of control and management of the proceedings.

In trying to understand the procedural issues and the determination of the submission on the Court's lack of jurisdiction as understood by the lawyers for the Respondents and the Judges who issued the Majority Judgment by applying the Kenyan Constitutional provision, which uses the words "hear and determine" in a similar provision to Article 103 of the Zambian Constitution, the Commission interrogated Article 103 and found that unlike the Kenyan provision, the Zambian Article 103 separated the procedures in 3 distinct stages as follows:

1. petition the Court within 7 days of the declaration of a President elect;
2. the constituted Court must hear the petition within 14 days of the filing of the petition;
3. the Constitutional Court may, after hearing an election petition –
 - (a) declare the election of the President-elect valid; or
 - (b) nullify the election of the President-elect and Vice President-elect.

Therefore, Article (1) deals with initiation of the process by filing the petition;

Article (2) deals with the hearing which must begin within 14 days of the filing;

Article (3) deals with the determination of decision of the matter.

Thereby, the deliberate separation of the hearing from the determination.

A careful reading of 103(2) is thereby clear that the 14 days relates to the period within which the Court should start to hear the petition but not to the actual hearing of the entire evidence. The procedure is actually infinite (right or wrong) as to how long the hearing can be for. This interpretation makes sense, otherwise it would be absurd to hear such an important petition in 14 days, considering the

historical length of time it took to hearing an election petition relating to a President elect. In such a case the purposive approach to the interpretation of statutes should have been used instead of the literal method.

The Respondents contend that the Judicial Complaints Commission (JCC) conclusive determination (see para 4 of the submissions) of the 2016 complaints acknowledged by the JCC in its letter dated 10th January, 2023 and 1st June, 2023 under the hand of the Chairperson of the JCC, Mr. Vincent Malambo, SC, should be upheld.

We wish to clearly state that the issue of estoppel is not set in concrete and can be challenged on specific grounds such as *per incuriam*, and the propriety of the procedures or that employed in deciding to open a case or new evidence or facts. Further, with due respect to the Chairperson of the JCC, he should never have participated in the meeting of the JCC on the matter of the Judges' misconduct without declaring interest where upon which he wrote the letters of 10th January, 2023 and 1st June, 2023 so heavily relied upon by the Respondents without declaring interest in the matter and he should have withdrawn from the meeting. His subsequent writing of the letters should not have been done, due to the serious conflict of interest arising from the Chairperson having represented Judge Chibomba in her misconduct case, before the JCC. The Chairperson's participation amounted to unethical conduct and breach of the law of meetings, making those procedures void.

Therefore, the arguments or submissions by the Respondent that on the jurisdiction of the Commission is not upheld as it does not apply.

7.0 FINDING

After assessing all the evidence before us, reviewing the authorities cited herein, relevant to the issues, we must decide, we find that the collective conduct of the Respondents, meet the test of a situation where the Judicial Complaints Commission is the appropriate body to address the complaint lodged by the Complainant herein.

The conduct of the Respondents presents sufficient grounds for removal of the three Respondents from office within the meaning of Article 143(b) and (c) of the Constitution.

8.0 RECOMMENDATION

The allegations against the Respondents having been substantiated the Commission recommends that the Respondents be immediately removed from holding office of Constitutional Court Judges.

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The Letters Patent signed by the President constituting Hon. Justice Anne Mwewa Sitali, Hon. Justice Mugeni Siwale Mulenga and Hon. Palan Mulonda as Judge be recalled and cancelled.

Dated this 20th day of October 2024



.....
MADAM JUSTICE PRISCA M. NYAMBE SC.
CHAIRPERSON



.....
MR. KEPHAS KATONGO
COMMISSIONER



.....
MRS. EVA JHALA
COMMISSIONER

Judicial Complaints Commission

20 OCT 2024

P.O. Box 50781, Lusaka.

Tel: 0211 254353, Fax: 0211 254341

JUDICIAL COMPLAINTS COMMISSION

IN THE MATTER OF: ARTICLE 1(3), 2, 119, 128,129, 143 AND 144 OF THE CONSTITUTION OF ZAMBIA 1991 AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: SECTION 4(2) AND 8 AND 21 OF THE CONSTITUTIONAL COURT ACT NO. 8 OF 2016

IN THE MATTER OF: SECTION 25 OF THE JUDICIAL CODE OF CONDUCT ACT NO. 13 OF 1999 AS AMENDED BY THE JUDICIAL CODE OF CONDUCT (AMENDMENT) ACT NO. 13 OF 2006

IN THE MATTER OF: ORDER IV AND XV OF THE CONSTITUTIONAL COURT RULES STATUTORY INSTRUMENT NO. 37 OF 2016

IN THE MATTER OF: A COMPLAINT OF ALLEGED INCOMPETENCE, GROSS MISCONDUCT AND WILFUL VIOLATION OF THE CONSTITUTION OF ZAMBIA BY JUDICIAL OFFICERS

BETWEEN:

MOSES KALONDE

COMPLAINANT

AND

HON JUSTICE ANNE M SITALI

1ST RESPONDENT

HON JUSTICE MUNGENI MULENGA

2ND RESPONDENT

HON JUSTICE PALAN MULONDA

3RD RESPONDENT

CORAM : JUDGE PRISCA M. NYAMBE (RTD) SC - CHAIRPERSON

MRS. EVA JHALA – COMMISSIONER

MR. KEPHAS KATONGO – COMMISSIONER



ARTICLE 144 OF THE CONSTITUTION

Quoting only the parts of this Article relevant for this case, the Constitution in Article 144 provides that:

"144(1) The removal of a Judge may be initiated by the Judicial Complainants Commission or by a Complaint made to the Judicial Complaints Commission, based on the grounds specified in Article 143;

(2) The Judicial Complaints Commission shall, where it decides that a prima facie case has been established against a Judge, submit a report to the President;

(3) The President shall, within seven days from the date of receiving the report submitted in accordance with clause (2), suspend the Judge from office and inform the Judicial Complaints Commission of the suspension.

(4) The Judicial Complaints Commission shall, within (30) thirty days of the Judge being suspended from office, in accordance with Clause (3) -

(a) Hear the matter against the Judge on the grounds specified in Article 143 (b), (c) and (d);

(b)...

(5) Where the Judicial Complaints Commission decide that an allegation based on a ground specified in Article 143 (b), (c) and (d) is -

(a) Not substantiated, the Judicial Complaints Commission shall recommend, to the President the revocation of the Judge's suspension and the President shall immediately revoke the suspension; or

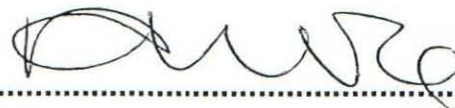
(b) Substantiated, the Judicial Complaints Commission shall recommend to the President, the removal of the Judge from office and the President shall immediately remove the Judge from Office."

Pursuant to Article 144(2) having found no merit in the preliminary issues owing to the fact that the complaint before the Commission has raised new issues which were not raised in six previous complaints alluded to by Counsel for the Respondents and having read the complaint before the Commission and the responses from the Respondents, we find that a *prima facie case* has been made against the Respondents as provided for in Article 144(2) of the Constitution.

In accordance with the provisions of Articles 143 and 144 of the Constitution, the Commission respectfully submits that the Respondents namely; Hon. Madam Justice Anne M. Sitali, Hon. Madam Justice Mugeni S. Mulenga and Mr. Justice Palan Mulonda should be suspended from office to allow the Commission to hear the complaint leveled against the Respondents and avail the Respondents opportunity to answer the allegations.

We humbly submit.

Dated this 23rd day of September 2024



MADAM JUSTICE PRISCA M. NYAMBE SC.
COMMISSIONER



MR. KEPHAS KATONGO
COMMISSIONER



MRS. EVA JHALA
COMMISSIONER

