

SIMEZA | SANGWA & ASSOCIATES NEWSLETTER



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Legal Updates



Data Protection Commissioner Appointed

The Civil Service Commission has appointed Mr Likando Lyuka as Zambia's first-ever Data Protection Commissioner (the "Commissioner") in line with section 4 of the Data Protection Act No. 3 of 2021 (the "Act").

The office of the Data Protection Commissioner will function as a central authority to resolve data protection issues, investigate any violations, and take appropriate measures to protect people's privacy rights.

The Commissioner's appointment is, therefore, anticipated to enhance the implementation and enforcement of the Act.

New System At The Lands And Deeds Registry

The Ministry of Lands and Natural Resources is currently in the process of replacing the Zambia Integrated Land Management Information System ("ZILMIS") with the Zambia Integrated Land Administration System ("ZILAS"). All land transactions are now required to be recorded and processed using ZILAS, and as a result, all property owners are

required to verify their certificates of title under ZILAS, pending which all transactions over their properties shall be prohibited.

Small Claims Court Grows Wings

Chief Justice Dr Mumba Malila, in exercise of the powers contained in section 5 of the Small Claims Court Act, has by way of Statutory Instrument No. 20 of 2023 conferred jurisdiction on the Small Claims Court to hear claims of up to Seventy-Five Thousand Kwacha (K75,000.00).

Minerals Regulation Commission Underway

The Ministry of Justice has finalised for submission to parliament, draft legislation to establish the Minerals Regulation Commission which shall function as an independent mining regulator. The Commission shall play a key role in monitoring and regulating mining activities, ensuring compliance with the law, and combating illegality.

President Appoints New Boards

The President has, subject to ratification by Parliament, appointed new boards of

the Human Rights Commission ("HRC"), and the Financial Intelligence Centre ("FIC") to be led by the following—

HRC: Dr Pamela Sambo as Chairperson

Dr Felicity Kalunga as Deputy Chairperson

FIC: Mr Dinde Simacheche as Chairperson

Mr Sydney Chisenga as Vice Chairperson

Bank Of Zambia Takes Control

The Bank of Zambia (BoZ) has taken over possession of Development Bank of Zambia ("DBZ") and Betternow Finance Company Limited ("Betternow Finance").

BoZ's intervention is due to DBZ's apparent persistent non-compliance with the Banking and Financial Services (Adequacy Capital) Regulations. On the other hand, Betternow Finance, despite consistent engagements with BOZ, has allegedly been unable to resolve its deteriorating financial performance and condition.

During the period of possession, BoZ shall be at liberty to take any action it deems fit in accordance with the Banking and Financial Services Act of 2017.



Challenging A Certificate Of Re-Entry: High Court Or Lands Tribunal? - Aaron Chungu V Peter Chanda & Ors

By Katongo Chileshe & Twaambo Mukuni

Prior to the Supreme Court's Judgment in the case of *Aaron Chungu v Peter Chanda & others SCZ/8/02/2023*, there was some uncertainty concerning whether the High Court can, in addition to the Lands Tribunal, hear and determine legal actions challenging a certificate of re-entry issued by the Commissioner of Lands.

Those with the view that the High Court cannot hear and determine claims involving re-entry relied on section 13 (3) of the Lands Act Chapter 184 of the Laws of Zambia (the "Lands Act") which states that any person aggrieved with a certificate of re-entry over their property may appeal to the Lands Tribunal.

On the other hand, there has been an ardent school of thought that the High Court can hear and determine

claims involving re-entry. This view was premised on the fact that Article 134 of the Constitution grants the High Court unlimited and original jurisdiction in civil matters. Adherents of this school of thought were further strengthened by various Supreme Court decisions wherein our Apex Court held that the High Court and the Lands Tribunal have concurrent jurisdiction in land matters.

These two divergent views have over the years been the centre of judicial intervention. Recently, the High Court in the case of *Mwangala Mwenda Lethbridge and another v Terra Constructions Limited and 3 others*, attempted to bring finality to the debate by holding that litigants who seek to challenge the Commissioner of Lands over a perceived unlawful re-entry could seek redress in either the Lands Tribunal or the High Court as the two forums had concurrent jurisdiction in matters involving re-entry.

Subsequent to the High Court's Ruling in the *Mwangala Mwenda Lethbridge* case, the Supreme Court in the case *Aaron Chungu v Peter Chanda SCZ/8/02/2023* also pronounced itself on the competency of the High Court to

hear and determine re-entry matters.

Firstly, the Supreme Court began by repeating and clarifying its long-held position that though the High Court has unlimited and original jurisdiction in civil matters, it must operate within boundaries stipulated by statutes, rules, and common law.

The Supreme Court went on to state that the unlimited jurisdiction which the High Court enjoys is subject to section 13 (3) of the Lands Act when it comes to claims involving re-entry.

The Court was of the view that a party aggrieved by a certificate of re-entry must seek redress before the Lands Tribunal as the High Court has no jurisdiction to hear and determine such matters.

By its decision in *Aaron Chungu v Peter Chanda SCZ/8/02/2023*, the Supreme Court has now clarified any supposed ambiguities when it comes to claims involving re-entry. Going forward, litigants are well guided on what forum to approach in challenging a certificate of re-entry.



The Wide Discretion To Award Costs In The Constitutional Court

By Bernard Stephen

In 2016, the amendment of the Constitution of Zambia established the Constitutional Court as one of the two Apex Courts, having equal ranking with the Supreme Court of Zambia.

According to Article 128 (1) of the Constitution, the Constitutional Court has original and final jurisdiction to hear among others: matters relating to the interpretation of the Constitution; matters relating to a violation or contravention of the Constitution; matters relating to the President, Vice-President or an election of a President; and appeals relating to the election of members of parliament and councillors.

Being the supreme law of the land, issues that arise from the Constitution are vital to the entire legal framework of Zambia. The Constitutional Court, which is a specialised court, was clearly established to deal with matters of public and national interest.

It is for this reason that Article 2 (a) of the constitutions gives every person the right and duty to defend the Constitution. Be that as it may, the Constitutional Court, similar to the other courts, has wide discretion to award costs as per section 30 of the Constitutional Court Act.

The essence of the Court awarding costs is to indemnify the successful party for expenses they have incurred during the court proceedings. Put differently, unsuccessful parties are reproved for dragging a matter to court.

However, looking at the spirit and aim of the Constitutional Court, it would seem that an award for costs by the Constitutional Court goes against the spirit of the constitution.

This is because, the Constitution has created at an atmosphere where any person should ordinarily be free and willing to seek judicial intervention in order to protect the Constitution, promote constitutionalism and to further give effect to the rule of law.

As it stands, however, these ideals appear to have been stifled due to the Constitutional Court's wide discretion to award costs.

As would be expected, an award of costs by the Constitutional Court acts as a deterrent as persons intended to be covered under Article 2 (a) of the Constitution are discouraged from bringing issues before the Constitutional Court due to the possibility of being condemned in costs.

It can, therefore, be argued that the situation as it stands is contrary to the intention of the Constitution which entitles "every person" to defend the Constitution.

Perhaps our legislators can draw inspiration from the Kenyan Constitution which provides that notwithstanding the Court's discretion to award costs, it must ensure that every person has access to the Court in order to determine their rights and fundamental freedoms, whereas the zambian framework merely gives the constitutional court the wide discretion to reward costs

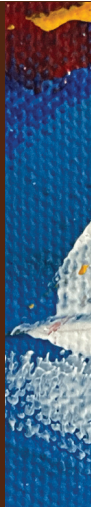
It is therefore suggested that the Zambian legal framework be amended to ensure that every person can freely exercise their right to defend the Constitution without fear or favour.

Meet the Team – Associates



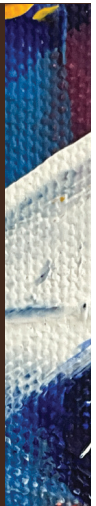
Webster Kayope

Webster obtained his Bachelor of Laws degree from the University of Zambia in 2019 and secured his license to practice as an Advocate of the High Court for Zambia in 2021. In addition, Webster has a certificate in financial auditing and is also a member of the Chartered Institute of Arbitrators. Beyond his love of the law, Webster possesses a wide array of interests. He is an avid traveller who embraces the opportunity to explore new cultures and places. When not in the office or courtroom, he can be found engaging in friendly matches of football and chess. A lover of the arts, Webster also finds solace and inspiration in artistic expression.



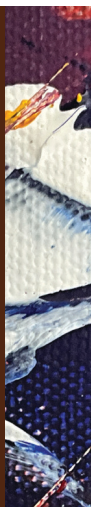
Kawana Kawana

Kawana obtained his Bachelor of Laws degree from the University of Zambia in 2018 and was thereafter called to the Zambia bar as an Advocate of the High Court in 2020. As an outstanding negotiator, Kawana has a unique ability to navigate complex legal matters and find solutions. His tactical approach to litigation sets him apart, allowing him to provide strategic and effective counsel to his clients. In addition to his legal prowess, Kawana is an avid enthusiast of field hockey and rugby, where he finds an outlet for both physical fitness and teamwork.



Naomi Mwila

Naomi holds a Bachelor of Laws degree and a Master of Laws degree, both obtained from the University of Zambia, with a specialisation in commercial law. Additionally, she is also an advocate of the High Court of Zambia. Throughout her time at SSA, Naomi has garnered invaluable experience in resolving a wide spectrum of disputes in the fields of commercial, contract, family, and tort law. Her sound judgment and astute analytical skills have consistently led to favourable outcomes for her clients. In her free time, Naomi loves swimming, listening to thought-provoking podcasts, and enjoying the thrills of soccer matches.



Fostering Wellness and Camaraderie: SSA's July Pursuit of Balance and Team Spirit

In the month of July, SSA upheld its enduring tradition of promoting a well-rounded and health-conscious way of life. Demonstrating our unwavering commitment to holistic well-being, our team wholeheartedly engaged in the ZA Inter-Company Relay event. This occasion saw our members actively participating in both the revitalizing 5km health walk and the exhilarating 10km road run.



Moreover, our enthusiasm for fostering wellness and camaraderie was further showcased through our Saturday Tamanga sessions. These sessions, which have returned with renewed vigor, serve as a testament to our dedication to cultivating physical and mental wellness within our team.

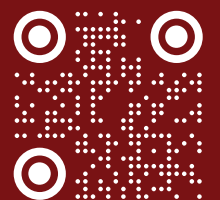
As we continue to pursue the path of optimal wellness, it is evident that our collective goal remains centered on achieving a harmonious synergy between individual health and team spirit. Through our unwavering participation in events such as the ZA Inter-Company Relay and the revival of Tamanga sessions, we are reinforcing our shared commitment to a balanced and vibrant lifestyle



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