

**IN THE CONSTITUTIONAL COURT OF ZAMBIA  
AT THE CONSTITUTIONAL COURT REGISTRY  
HOLDEN AT LUSAKA**  
*(Constitutional Jurisdiction)*

2025/CCZ/003

IN THE MATTER OF: ARTICLES 1, 2, 43 (2) (a), AND 128 (1) (b) and 128 (3) (a) (c) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH SECTION 11 (2) (c) (d) OF THE CONSTITUTIONAL COURT ACT NO. 8 OF 2016

IN THE MATTER OF: ARTICLES 34, 35 (1), 37, 42 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH SECTIONS 2, 9 (b) (i), 19, 20 (1) (b) (g), 45 OF THE REFUGEES ACT, SECTION 8 (1) OF THE CHILDREN'S CODE ACT NO. 12 OF 2022, SECTIONS 6 AND 8 OF THE NATIONAL REGISTRATION ACT, 1964 AND REGULATION 3 (2) OF THE NATIONAL REGISTRATION REGULATIONS, 2019.



IN THE MATTER OF: INTERPRETATION OF ARTICLES 37, 42 (b) AND 266 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH SECTION 20 (1) (c) AND 49 OF THE REFUGEES ACT NO 1 OF 2017 ON ACQUISITION OF CITIZENSHIP BY CHILDREN BORN IN ZAMBIA FROM REFUGEE PARENTS AND REFUGEES.

IN THE MATTER: THE ALLEGED INCONSISTENCY WITH AND CONTRAVENTION OF ARTICLE 266 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA BY SECTION 2 OF THE CITIZENSHIP OF ZAMBIA ACT NO. 33 OF 2016 ON THE DEFINITION OF ORDINARILY RESIDENT

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLE 79 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA BY SECTION 2 OF THE CITIZENSHIP OF ZAMBIA ACT NO. 33 OF 2016 ON THE ALTERATION OF THE DEFINITION OF ORDINARILY RESIDENT IN THE CONSTITUTION BY AN ACT OF PARLIAMENT.

**BETWEEN:**

**ZAMBIA CIVIL LIBERTIES UNION**

**PETITIONER**

**AND**

**COMMISSIONER FOR REFUGEES**

**1<sup>ST</sup> RESPONDENT**

**CHIEF REGISTRAR OF DEPARTMENT OF NATIONAL  
REGISTRATION, PASSPORT AND CIVIL REGISTRATION**

**2<sup>ND</sup> RESPONDENT**

**CHIEF PASSPORTS AND CITIZENSHIP OFFICER AT THE  
CITIZENSHIP OF ZAMBIA BOARD**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

**GLOBAL STRATEGIC LITIGATION COUNCIL**

**AMICUS CURIAE**

**CORAM: MUNALULA - PC, SHILIMI - DPC, MUSALUKE, CHISUNKA,  
MULONGOTI, MWANDENGA AND MULIFE JJC ON 10<sup>TH</sup> FEBRUARY,  
2026 AND 27<sup>TH</sup> APRIL, 2026**

For the Petitioner: Mr. Isaac Mwanza (Executive Director of the Petitioner, In-Person)

For the Respondents: Mr. C. Simuusa, Assistant Senior State Advocate;  
Mr. M. Kwalela, Senior State Advocate;  
Mr. K. Sakachiva and Mr. A. Isiteketo, State Advocates

For the *Amicus Curiae*: Ms. M. Lwindi and Mr. W. Chinyemba of Eric Silwamba, Jalasi and Linyama Legal Practitioners

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## **JUDGMENT**

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**Musaluke, JC, delivered the Judgment of the Court**

**Cases referred to:**

1. Henry Kapoko v The People CCZ Selected Judgment No. 43 of 2017
2. Dipak Patel v Minister of Finance & the Attorney General 2020/CCZ/005
3. United States v Butler, 297 U.S 1 (1936)
4. Godfrey Miyanda v The Attorney General 2016/CC/0006
5. Webby Mulubisha v The Attorney General 2018/CCZ/0013
6. Law Association of Zambia and Chapter One Foundation Limited v The Attorney General 2019/CCZ/0013/14
7. Bernard Shajilwa and 4 Others v The Attorney General 2018/CCZ/004

**Legislation referred to:**

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

The Constitutional Court Act No. 8 of 2016

The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

The Citizenship of Zambia Act No. 33 of 2016

The Refugees Act No. 1 of 2017

The Immigration and Deportation Act No. 18 of 2010

**Other works referred to:**

The 1951 UN Convention Relating to the Status of Refugees and its Protocols

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1967

[1.0] **INTRODUCTION**

[1.1] This petition was filed on 28<sup>th</sup> January, 2025. The matter could not be heard and determined expeditiously because the parties had initially opted to pursue an *ex curia* settlement. When it became apparent that no settlement could be reached, the Court proceeded to hear the

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[1.0] **INTRODUCTION**

[1.1] This petition was filed on 28<sup>th</sup> January, 2025. The matter could not be heard and determined expeditiously because the parties had initially opted to pursue an *ex curia* settlement. When it became apparent that no settlement could be reached, the Court proceeded to hear the

matter on its merits. This explains the delay in concluding the proceedings.

[1.2] On 1<sup>st</sup> April, 2025, Global Strategic Litigation Council, an Organisation with expertise in advancing the rights of displaced communities through coordinated strategic litigation and legal advocacy made an application to attend these proceedings as *amicus curiae* (the *Amicus*). The *Amicus* was duly admitted and filed a brief before Court. The said brief is summarised at paragraphs 4.0 to 4.6 of this Judgment.

[2.0] **PETITIONER'S CASE**

[2.1] The petition was brought pursuant to Articles 1, 2, 35, 36, 37, 42, 43, 79, 128 (1) (b) and 266 of the Constitution of Zambia, as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution), read together with section 11 (2) (c) and (d) of the Constitutional Court Act No. 8 of 2016 (the Act) and Order IV Rule 1 of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (CCR).

[2.2] The Petitioner sought interpretation of constitutional provisions relating to citizenship for refugees and their children born in Zambia. Particularly, as follows:

- i. **Whether in terms of Article 35 and 42 of the Constitution, a child born in Zambia to one parent, who at the date of the Child's birth, was a refugee and the other parent was a citizen of Zambia, is a citizen of Zambia by birth and entitled to the rights, privileges and benefits of citizenship, including the issuance of identification documents;**
- ii. **Whether in terms of Article 37, 42 and 266 of the Constitution, a person who was born in Zambia to parents who, at the date of the person's birth, were both refugees, but has attained the age of 18 and has been ordinarily resident in Zambia for a period of at least five years, is entitled to apply to the Citizenship Board of Zambia to be registered as a citizen of Zambia;**
- iii. **Whether in terms of Articles 37(1)(a)(c) and 266 of the Constitution as read together with section 20(1)(c) of the Refugees Act, a refugee who has attained the age of 18 and has been ordinarily resident in Zambia for a period of at least five years or for a continuous period of at least ten years, can apply for registration as a citizen of Zambia without having to first lose his or her refugee status; and**
- iv. **Whether in terms of Article 37 of the Constitution as read together with section 49 of the Refugees Act, a person who has ceased to be a recognized refugee can be naturalized and is entitled to acquire citizenship by registration.**

[2.3] The petition also alleges the following contraventions of the Constitution.

- i. **That section 2 of the Citizenship of Zambia Act which provides for the definition of the words "ordinarily**

**resident” is inconsistent with and contravenes Article 266 of the Constitution, making the definition in the Citizenship of Zambia Act null and void to the extent of its inconsistency.**

- ii. That the provision of the definition of “ordinarily resident” in section 2 of the Citizenship of Zambia Act to refer to the meaning of the word ordinary resident as used in the Constitution constitutes an amendment to the definition provided by Article 266 of the Constitution through an ordinary Act of Parliament, an act that contravenes Article 79 of the Constitution, is unconstitutional, illegal, null and void.**

**[2.4] Based on the foregoing, the Petitioner seeks the following relief and remedies:**

- i. Interpretation of Articles 37, 42 (b) and 266 of the Constitution of Zambia as read together with Sections 20 (1) (c) and 49 of the Refugees Act No 1 Of 2017 on acquisition of citizenship by refugees and their dependents;**
- ii. A declaration that the definition of the word “ordinarily resident” as contained in section 2 of the Citizenship of Zambia Act is inconsistent with the definition provided in Article 266 of the Constitution as amended and is null and void to the extent of its inconsistency;**
- iii. A declaration that section 2 of the Citizenship of Zambia Act altered the definition of the words “ordinarily resident” as contained in Article 266 of the Constitution, without following the proper procedure outlined in the Constitution. An act that contravenes Article 79 of the Constitution; and**
  - iv. Any other reliefs the Court may deem fit.**

**resident” is inconsistent with and contravenes Article 266 of the Constitution, making the definition in the Citizenship of Zambia Act null and void to the extent of its inconsistency.**

- ii. That the provision of the definition of “ordinarily resident” in section 2 of the Citizenship of Zambia Act to refer to the meaning of the word ordinary resident as used in the Constitution constitutes an amendment to the definition provided by Article 266 of the Constitution through an ordinary Act of Parliament, an act that contravenes Article 79 of the Constitution, is unconstitutional, illegal, null and void.**

**[2.4] Based on the foregoing, the Petitioner seeks the following relief and remedies:**

- i. Interpretation of Articles 37, 42 (b) and 266 of the Constitution of Zambia as read together with Sections 20 (1) (c) and 49 of the Refugees Act No 1 Of 2017 on acquisition of citizenship by refugees and their dependents;**
- ii. A declaration that the definition of the word “ordinarily resident” as contained in section 2 of the Citizenship of Zambia Act is inconsistent with the definition provided in Article 266 of the Constitution as amended and is null and void to the extent of its inconsistency;**
- iii. A declaration that section 2 of the Citizenship of Zambia Act altered the definition of the words “ordinarily resident” as contained in Article 266 of the Constitution, without following the proper procedure outlined in the Constitution. An act that contravenes Article 79 of the Constitution; and**
- iv. Any other reliefs the Court may deem fit.**

- [2.5] When the matter came up for hearing on 10<sup>th</sup> February, 2026 the Petitioner informed the Court that it no longer wished to pursue the request for constitutional interpretation. It elected instead to confine its case to the alleged contraventions of the Constitution. This judgment therefore, focuses on the issues arising from the alleged breaches of constitutional provisions and the remedies sought by the Petitioner in relation thereto.
- [2.6] The Petitioner contends that, Article 1(1) of the Constitution, emphatically states that the Constitution is the supreme law of the land, and therefore any written law, customary law or customary practice inconsistent with its provisions is void to the extent of the inconsistency. The Petitioner further contends that constitutional provisions often require statutory frameworks to give effect to their enforcement.
- [2.7] Furthermore, that under Article 1(2) of the Constitution, an act or omission that contravenes the Constitution is illegal. Additionally, that Article 1(3) of the Constitution affirms the binding effect of the Constitution on every person, state organ and state institution and that its validity cannot be challenged by or before a state organ or other forum. Reference was made to the case of **Henry Kapoko v The**

**People<sup>1</sup>** in which this Court reaffirmed the supremacy of the Constitution.

[2.8] The Petitioner argues that in order to give effect to Articles 37, 40 (2) and 41 of the Constitution, Parliament enacted the Citizenship of Zambia Act No. 33 of 2016 (the Citizenship Act).

[2.9] That for purposes of Article 37 of the Constitution, section 22 of the Citizenship Act has computation of period of residence for purposes of registration as follows:

**The period to be taken into account in computing a period for a person who qualifies for citizenship by registration in accordance with the Constitution and this Act is the period during which a person is ordinarily resident in Zambia.**

[2.10] That although section 22 of the Citizenship Act is meant to provide for computation of period of residence for purposes of registration in accordance with the Constitution, section 2 of the Citizenship Act further proceeds to define the phrase "ordinarily resident" in the following manner:

**"Ordinarily resident" means a person who has been or has been a resident in Zambia and is a holder of a resident permit issued under the Immigration and Deportation Act 2010.**

[2.11] The Petitioner argues that section 2 of the Citizenship Act is not only inconsistent with Article 266 of the Constitution but also contravenes

Article 79 of the Constitution, as it alters the definition set out in Article 266 and puts additional requirements of being a holder of a resident permit not contemplated by the Constitution and without adhering to the prescribed constitutional amendment procedure.

[2.12] The Petitioner contends that this Court has consistently applied a well-established approach in determining whether a statutory provision conflicts with the Constitution by directly comparing the provision in question against the relevant constitutional provision.

[2.13] The Petitioner argues that the rationale behind this approach is that all legislation remains subordinate to the Constitution. The case of **Dipak Patel v Minister of Finance and the Attorney General**<sup>2</sup> is cited in support of this assertion in which this Court re-affirmed the fundamental constitutional principle that every law derives its authority from the Constitution and must therefore conform to it.

[2.14] The Petitioner also cites the case of **United States v Butler**<sup>3</sup> in which the US Supreme Court is said to have held *inter alia* that:

**When an Act of congress is appropriately challenged in the Courts as not conforming to the Constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former.**

[2.15] Based on the foregoing, the Petitioner submits that where the Constitution itself defines a phrase such as “ordinarily resident”, no inferior legislation can surreptitiously introduce provisions that alter, narrow, or broaden its meaning by adding additional requirements to be fulfilled. Any such attempt constitutes an unconstitutional encroachment upon the supremacy of the Constitution.

[2.16] The Petitioner argues that when this Court places Article 266 of the Constitution, beside section 2 of the Citizenship Act in order to determine whether the latter conforms to the former, it becomes inescapably clear that the two definitions are not identical. That the Citizenship Act effectively alters the constitutional definition in that Article 266 of the Constitution stipulates that a person must have resided in a place for a prescribed period, which period is established under Article 37 of the Constitution.

[2.17] That the term “ordinarily resident in Zambia” in Article 37 of the Constitution refers to a person’s lawful residence in the country prior to applying for citizenship by registration. Had the framers of the Constitution intended to expand this definition to encompass possession of a residence permit, they would have expressly incorporated such a requirement into the constitutional text. That the attempt by the Citizenship Act to redefine “ordinarily resident” so as

to include the holding of a resident permit therefore, amounts to an impermissible broadening of the constitutional meaning, rendering the statutory definition inconsistent with the Constitution.

[2.18] The Petitioner further drew this Court's attention to the case of **Godfrey Miyanda v The Attorney General**<sup>4</sup>, wherein the term "discrimination" in Article 266 of the Constitution was held to be inconsistent with the definition in Article 23 (3) of the Constitution and *ultra vires* Article 79 of the Constitution. That in that case, this Court acknowledged that although both definitions substantially addressed the same principle of discrimination, they were distinctly worded. Notably, the definition in Article 266 of the Constitution expanded the grounds of discrimination beyond those enumerated in Article 23 of the Constitution.

[2.19] The Petitioner urges us to find that while the definition of "ordinarily resident" in section 2 of the Citizenship Act and Article 266 of the Constitution address the same underlying principle for the purposes of Article 37 of the Constitution, they are not identical and that the definition in section 2 of the Citizenship Act impermissibly expands the grounds for ordinarily resident beyond the scope established in Article 266 of the Constitution, thereby altering the constitutional standard.

[2.20] The Petitioner further submits that this Court has power to order that section 2 of the Citizenship Act be expunged therefrom in line with this Court's decision in the case of **Webby Mulubisha v The Attorney General**<sup>5</sup> wherein, this Court stated that any provision in the statute book which runs afoul of a provision of the Constitution is void to the extent of the inconsistency in question.

[2.21] The Petitioner stresses that the Immigration and Deportation Act No. 18 of 2010 (the Immigration and Deportation Act), was enacted to regulate the entry and stay of immigrants and visitors, with resident permits issued only to regular migrants. However, that children born in Zambia to refugees are not immigrants in both the legal and ordinary sense as they are born within the country's borders and like all other children, are issued birth records by the 2<sup>nd</sup> Respondent, not resident permits. That therefore, the expansion of the term "ordinarily resident" in the Citizenship Act unjustly impacts children of refugees, effectively barring them from accessing Zambian citizenship. Adding that even refugees themselves are not considered regular migrants and are ineligible for resident permits under the existing immigration law.

[2.22] That the result is a systematic legal barrier that denies citizenship to children born to refugees despite their clear eligibility under the

Constitution and Refugees Act No. 1 of 2017 (the Refugees Act). That the law's exclusion creates a contradiction in that, while these children are born and raised in Zambia, they are subjected to an impossible requirement that prevents them from acquiring citizenship.

[2.23] At the hearing, Mr. Mwanza, for the Petitioner, amplified the Petitioner's written arguments by submitting that there is no need for an Act of Parliament to prescribe the period of time as the Constitution itself has prescribed the period of time when a person must ordinarily be a resident of Zambia in Article 35 of the Constitution.

[2.24] He stressed that the definition of ordinarily resident is key in determining who qualifies for citizenship, adding that the factual basis of the petition is about a young person called a refugee or who has been classified as a refugee, despite having been born and having lived in Zambia their whole life.

[2.25] The Petitioner referred us to the demographic presentation of refugee population born in Zambia as at 30<sup>th</sup> June, 2024 provided by the Ministry of Home Affairs and Internal Security (appearing at page 53 - 55 of the Record of Proceedings).

[2.26] The demographic presentation shows that at the time of the report, Zambia had 40 people above 60 years and 3329 persons between 18 and 59 years who were born and live in Zambia but remain refugees

because they do not fit in the definition of ordinarily resident as provided for in the Citizenship Act. Further, that there are 17,000 refugees who ceased to be refugees yet they cannot apply for citizenship because they also do not fit in the definition of ordinarily resident as provided for in the Citizenship Act. That however, under the constitutional definition of ordinarily resident, they would have been allowed to apply for citizenship.

[2.27] In conclusion, Mr. Mwanza submitted that this Court has jurisdiction under Article 1(5) of the Constitution to hear this matter as the question of citizenship is a constitutional matter. He stressed that the present case is one of public importance as it affects the lives of human beings. That the Petitioner was not asking the Court to grant automatic citizenship to refugees that there must be considerations of national security and proper vetting.

[2.28] He prayed that this Court grants the reliefs sought and declares section 2 of the Citizenship Act is null and void in so far as the definition of "ordinarily resident" is inconsistent with the definition in the Constitution.

[3.0] **RESPONDENTS' CASE**

- [3.1] The Respondents filed their answer and skeleton arguments on 21<sup>st</sup> February, 2025.
- [3.2] The thrust of the Respondents' opposition is that the Petitioner has not raised constitutional questions, as a constitutional question is one that is resolved by interpreting the Constitution not statutes. The Respondents rely on the provisions of Article 128 of the Constitution as read with section 8 of the Constitutional Court Act in support of their submission.
- [3.3] The Respondents also oppose the Petitioner's claims, asserting that this Court lacks jurisdiction to hear a matter that relates to legislative errors and those bordering on the Bill of Rights. The Respondents cite the cases of **Law Association of Zambia and Chapter One Foundation Ltd v The Attorney General**<sup>6</sup> and **Bernard Shajilwa and 4 Others v The Attorney General**<sup>7</sup> to support the argument that the Court's jurisdiction is exclusive to constitutional interpretation and does not extend to adjudicating human rights claims enshrined in the Bill of Rights.
- [3.4] On the issue of whether the definition of the term "ordinarily resident" in section 2 of the Citizenship Act is inconsistent with the definition provided under Article 266 of the Constitution, the Respondents begin

by citing the definition of “ordinarily resident” as provided under Article 266 of the Constitution and argue that the phrase “residing in a place for a prescribed period of time”, refers to the act of living or staying in a specific location for a defined duration as set by the rules, regulations or agreements. That this could apply to various contexts such as legal residency requirements, rental agreements, immigration laws, where individuals must remain in a particular place for a certain length of time to meet specific criteria or obligations.

[3.5] That under section 2 of the Citizenship Act, the term “ordinarily resident” means a person who has been resident in Zambia and is a holder of resident permit issued under the Immigration and Deportation Act. It is further argued that a person who has been in Zambia and holds a resident permit issued under the Immigration and Deportation Act is someone who has been granted permission to reside in Zambia for a specified period. That this permit allows the individual to live and possibly work in the Country, subject to the conditions outlined in the permit and the relevant immigration laws.

[3.6] The Respondents thus submit that there is no conflict between the two laws and that the definition in the Citizenship Act merely elaborates on the constitutional provision by specifying that lawful residence requires a permit under the Immigration and Deportation

Act Further that section 2 of the Citizenship Act provides a clear operational definition that aligns with national interest and security considerations.

[3.7] The Respondents thus urge us to dismiss the relief and that section 2 of the Citizenship Act should not be rendered inconsistent with the Constitution.

[3.8] As regards, the allegation that Article 79 of the Constitution was contravened by enactment of section 2 of the Citizenship Act, the Respondents deny this allegation and submit that the Act provides the necessary clarification of the term "ordinarily resident" within the constitutional framework.

[3.9] The Respondents further state that the Petitioner has not demonstrated how the alleged procedure in Article 79 of the Constitution was contravened in enacting the Citizenship Act.

[3.10] On the status of a child born in Zambia to one parent who, at the date of the child's birth, was a refugee and the other parent was a citizen of Zambia, the Respondents acknowledge that such a child qualifies as a citizen by birth under Article 35 of the Constitution. The Respondents, however, contend that children born to refugee parents must follow the prescribed procedures to acquire citizenship.

including satisfying residency requirements under Article 37 of the Constitution.

[3.11] At the hearing, Mr. Kwalela, for the Respondents, augmented the Respondents' written arguments by submitting that this cause appears to be an innocent petition that may draw the sympathy of the Court because it seeks to address the plight of refugees. That he however, fears the security risks that may occur if this Court found for the Petitioner.

[3.12] Mr. Kwalela submitted that the Petitioner had not produced any refugee who had failed to acquire Zambian citizenship to demonstrate the alleged difficulty in the process. He referred the Court to paragraphs 16–20 of the petition and argued that the matter had already been presented before Parliament, where the Petitioner and other Civil Society Organisations participated in the consultative process of the enactment of Bill No. 23 of 2023.

[3.14] He explained that the purpose of Bill No. 23 of 2023 was to amend the definition of "ordinarily resident" under section 2 of the Citizenship Act so as to broaden its meaning and allow greater access to Zambian citizenship. That the Bill however, failed to secure the required two-thirds majority in Parliament and therefore, could not be enacted. He argued that this outcome demonstrates that the elected

representatives of the people, exercising sovereign authority, rejected the proposed amendment. He concluded that this reflects the will of the people of Zambia against altering the definition of the word “ordinarily resident” in section 2 of the Citizenship Act.

[3.15] In response to the issue concerning the right to citizenship of children born in Zambia to refugee parents, he argued that this issue was improperly before this Court and was misconceived. He contended that matters pertaining to the rights of individuals are properly grounded in the Bill of Rights. Accordingly, he submitted that the High Court and not this Court, is the appropriate forum to determine such issues.

[3.16] He urged us to dismiss the petition on the basis that there is no constitutional contravention.

[4.0] **AMICUS CURIAE BRIEF**

[4.1] In its brief, the *Amicus* submits that the matter before us challenges the provisions of section 2 of the Citizenship Act for being inconsistent with Articles 37 (1) and 266 of the Constitution to the extent that the Citizenship Act imposes additional requirements on access to Zambian citizenship. It is submitted that section 2 of the Citizenship Act violates Zambia's International obligation to grant citizenship to

children who are born in Zambia and have been ordinarily resident in the country for at least five years.

- [4.2] Accordingly, the *Amicus* submits that the Court should interpret Article 37(1)(a) of the Constitution of Zambia in a holistic manner, informed by Zambia's international obligations, so as to promote the Constitution and advance human rights and fundamental freedoms.
- [4.3] It argues that international law is relevant and applicable in Zambia. That Zambia acceded to the 1951 UN Convention Relating to the Status of Refugees and the 1967 UN Protocol Relating to the Status of Refugees on 24 September, 1969. It further ratified the Organisation of African Union (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa on 30 July, 1973.
- [4.4] The *Amicus* submits that by ratifying and domesticating these instruments, Zambia is obliged to protect the right of refugees and migrant children to nationality and to prevent arbitrary deprivation of nationality and statelessness. That Article 37(1)(a) of the Constitution reinforces this obligation by guaranteeing citizenship by registration to persons born in Zambia who have attained eighteen years and have been ordinarily resident for at least five years.

[4.5] The *Amicus*, further, submits that the Respondent is obliged under domestic, regional and international law to safeguard and fulfill the rights to nationality for children born in Zambia who have been ordinarily resident in Zambia for a period of at least five years. That arbitrary deprivation of nationality is expressly prohibited and the provision forms part of customary international law. That in the same manner, the obligation to prevent statelessness is considered as customary international law to which derogation is not allowed. This is because the right to nationality is essential for the realisation of rights guaranteed by domestic and international law.

[4.6] In conclusion, it is submitted that the Constitution expressly provides for its supremacy and any law that is inconsistent with it, is void to the extent of inconsistency. That the Citizenship Act imposes an additional requirement of holding a resident permit. That this added criterion unjustifiably narrows the constitutional definition and unlawfully limits access to citizenship rights. That this Court must find that the definition of the term "ordinarily resident" as provided under section 2(1) of the Citizenship Act is inconsistent with the provisions of Article 266 of the Constitution to the extent that it alters the definition as contemplated by the Constitution.

## **[5.0] CONSIDERATION AND DECISION**

[5.1] We have carefully considered the petition together with the affidavit in support and the accompanying skeleton arguments. We have equally considered the Respondents' answer, the affidavit verifying the answer, and the Respondents' skeleton arguments. We have further considered the oral submissions advanced by both parties during the hearing.

[5.2] We have also considered the detailed brief filed by the *Amicus*.

## **[5.3] ISSUES FOR DETERMINATION**

[5.4] The Petitioner has abandoned the quest for constitutional interpretation of the questions outlined at paragraph 2.2 of this Judgment. We must, however, underscore that in determining the remaining issues, this Court will necessarily engage in constitutional interpretation. The remaining issues to be dealt with are as follows:

- a) Whether section 2 of the Citizenship Act, which defines "ordinarily resident," is inconsistent with the definition provided under Article 266 of the Constitution.
- b) Whether the Respondent contravened the Constitution when it enacted the Citizenship Act without following the procedure as out outlined in Article 79 of the Constitution.

[5.5] In determining whether section 2 of the Citizenship Act is consistent with the Constitution, we must begin by examining the relevant constitutional provisions that deal with the issue of citizenship. It is a settled principle of constitutional interpretation that all provisions bearing upon the subject matter must be read together, so that the Constitution is construed as an integrated whole and not in fragments.

[5.6] The Constitution, under Part IV, establishes the framework for the acquisition, retention, and loss of citizenship.

[5.7] We will reproduce some of these constitutional provisions for clarity.

[5.8] Article 34 of the Constitution enacts as follows:

**Citizenship may be acquired by birth, descent, registration or adoption in accordance with this part.**

[5.9] Article 35 (1) of the Constitution enacts as follows:

**A person born in Zambia is a citizen by birth if, at the date of that person's birth, at least one parent of that person is or was a citizen.**

[5.10] Article 36 of the Constitution enacts as follows:

**A person born outside Zambia is a citizen by descent if, at the date of that person's birth, at least one parent of that person is or was a citizen by birth or descent.**

[5.11] Article 37 of the Constitution enacts as follows:

37. (1) Subject to clause (2), a person is entitled to apply to the Citizenship Board of Zambia to be registered as a citizen if that person has attained the age of eighteen years and—

(a) was born in Zambia and has been ordinarily resident in Zambia for a period of at least five years;

(b) was born outside Zambia, has or had an ancestor who is, or was, a citizen and has been ordinarily resident in Zambia for a period of at least five years; or

(c) has been ordinarily resident in Zambia for a continuous period of at least ten years;

immediately preceding that person's application for registration, as prescribed. (Emphasis added).

(2) Notwithstanding clause (1), a person who is, or was married to a citizen, for a period of at least five years, is entitled to apply to the Citizenship Board of Zambia, to be registered as a citizen, as prescribed.

[5.12] Article 40 of the Constitution provides as follows:

40. (1) A citizen—

(a) may renounce citizenship as prescribed; or

(b) shall be deprived of citizenship if that citizenship was acquired by means of fraud, false representation or concealment of a material fact.

(2) The process and procedures to be followed by the Citizenship Board of Zambia when granting or depriving a person of citizenship shall be prescribed.

[5.13] Article 42 of the Constitution enacts as follows:

A citizen is entitled to—

**(a) the rights, privileges and benefits of citizenship as provided in this Constitution or as prescribed; and**

**(b) a document of identification issued by the State to citizens.**

[5.14] As outlined in Article 37 of the Constitution, the phrase; “ordinarily resident” is used to qualify who should apply to the Citizenship Board of Zambia to be registered as a citizen. Article 266 of the Constitution then defines the term “ordinarily resident” as follows:

**“ordinarily resident” means residing in a place for a prescribed period of time;**

[5.15] Further, Articles 40 and 41 of the Constitution establish the Citizenship Board of Zambia and provide that the procedures to be followed by the Board in granting citizenship shall be prescribed. The Constitution, in Article 266, defines the term prescribed to mean “provided for in an Act of Parliament.”

[5.16] Reading Part IV of the Constitution as whole, we deduce that the framers of the Constitution deliberately anchored nationality in birth and descent, thereby affirming that those born within the territory or to Zambian parentage are, by operation of law, members of the national community. The text further recognises naturalisation as a lawful avenue for acquisition, reflecting openness to those who, through residence and allegiance, seek integration into the Zambian polity.

[5.17] Does section 2 of the Citizenship Act in its present form in its definition of the phrase: “ordinarily resident” embody these constitutional principles?

[5.18] Section 2 of the Citizenship Act defines ‘ordinarily resident’ in the following terms:

**“ordinarily resident” means a person who has been a resident in Zambia and is a holder of a residence permit issued under the Immigration and Deportation Act, 2010.** (Emphasis added).

[5.19] A reading of section 2 of the Citizenship Act, *vis-à-vis* Article 266 of the Constitution reveals that while both provisions provide for the definition of the term “ordinarily resident”, the wording is distinctly different. Section 2 of the Citizenship Act narrows the definition by requiring that a person intending to apply for citizenship must, in addition to having been ordinarily resident in Zambia be a holder of a residence permit issued under the Immigration and Deportation Act, No, 18 of 2010.

[5.20] Article 266 of the Constitution makes no mention of a residence permit, it merely stipulates that a person must have resided in a place for a prescribed period. On the other hand, Article 37 of the Constitution establishes the period one should be ordinarily resident;

being either five or ten years depending on the category of the applicant for Zambian citizenship.

[5.21] Clearly, when the definition of the phrase; “ordinarily resident” in Article 266 of the Constitution and section 2 of the Citizenship Act are laid side by side, they are not identical.

[5.22] It is our considered finding that section 2 of the Citizenship Act in its definition of the phrase “ordinarily resident”, qualifies the constitutional definition provided under Article 266 of the Constitution. This qualification arises from the inclusion of a requirement that a person must hold a residence permit issued under the Immigration and Deportation Act, 2010.

[5.23] If the framers of the Constitution had intended to qualify the definition of “ordinarily resident” by requiring possession of a residence permit, such requirement would have been explicitly stated in the Constitution itself. The departure by the Citizenship Act from the standard prescribed in the Constitution therefore, renders its definition inconsistent with the constitutional framework.

[5.24] In the case of **Godfrey Miyanda**<sup>4</sup>, we reinforced the principle of constitutional supremacy, specifically holding that statutory provisions

or regulations cannot expand, restrict, or contradict the clear terms of the Constitution.

- [5.25] Further in the case of **Webby Mulubisha**<sup>5</sup>, we held that any provision in the statute book which runs afoul of a provision of the Constitution is void to the extent of the inconsistency in question.
- [5.26] In light of these settled principles, we hold that the definition of “ordinarily resident” contained in section 2 of the Citizenship Act, in so far as it expands the definition of the term “ordinarily resident” to include holding of a residence permit issued under the Immigration and Deportation Act is inconsistent with the Constitution and therefore, invalid to the extent of that inconsistency.
- [5.27] The Petitioner further seeks a declaration that section 2 of the Citizenship Act altered the constitutional definition of the words “ordinarily resident” as contained in Article 266 of the Constitution, without following the proper procedure prescribed for constitutional alternation provided under Article 79 of the Constitution.
- [5.28] The Petitioner contends that any alteration of a definition expressly provided in the Constitution must strictly follow the amendment procedure set out in Article 79 of the Constitution. It argues that section 2 of the Citizenship Act impermissibly expanded the constitutional definition of “ordinarily resident” found in Article 266 of

the Constitution by including the holding of a residence permit under the Immigration and Deportation Act. In the Petitioner's view, this amounted to a substantive change to the constitutional definition without adherence to the prescribed amendment process, thereby rendering the statutory provision unconstitutional.

[5.29] The Petitioner's argument is fundamentally flawed. Article 79 of the Constitution prescribes the procedure for constitutional amendment. The present matter does not concern an amendment to the Constitution. Section 2 of the Citizenship Act did not purport to amend Article 266 of the Constitution, it merely provided a statutory definition of "ordinarily resident."

[5.30] Accordingly, the narrative that Parliament altered a constitutional definition of the words "ordinarily resident" without compliance with Article 79 of the Constitution is rejected as misconceived.

[5.31] For the foregoing reasons, relief (ii) of the petition succeeds and is granted. Relief (iii) fails and is dismissed.

## **[6.0] ORDER**

[6.1] It is hereby Ordered and declared as follows:

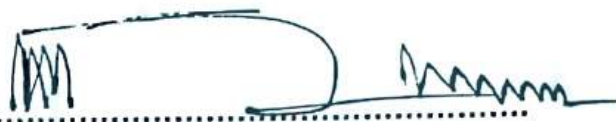
- a) The definition of "*ordinarily resident*" contained in section 2 of the Citizenship Act, in so far as it qualifies the meaning of that term to include the holding of a residence permit issued under the

Immigration and Deportation Act is Inconsistent with the Constitution and is invalid to the extent of that inconsistency.

- b) The claim by the Petitioner alleging non-compliance by Parliament with the constitutional amendment procedure under Article 79 of the Constitution is dismissed.
- c) Each party to bear own costs.



.....  
**M. MUNALULA JSD**  
**PRESIDENT - CONSTITUTIONAL COURT**



.....  
**A. M. SHILIMI**  
**DEPUTY PRESIDENT - CONSTITUTIONAL COURT**



.....  
**M. MUSALUKE**  
**CONSTITUTIONAL COURT JUDGE**



.....  
**M. K. CHISUNKA**  
**CONSTITUTIONAL COURT JUDGE**



.....  
**J. Z. MULONGOTI**  
**CONSTITUTIONAL COURT JUDGE**



.....  
**M. Z. MWANDENGA**  
**CONSTITUTIONAL COURT JUDGE**



.....  
**K. MULIFE**  
**CONSTITUTIONAL COURT JUDGE**