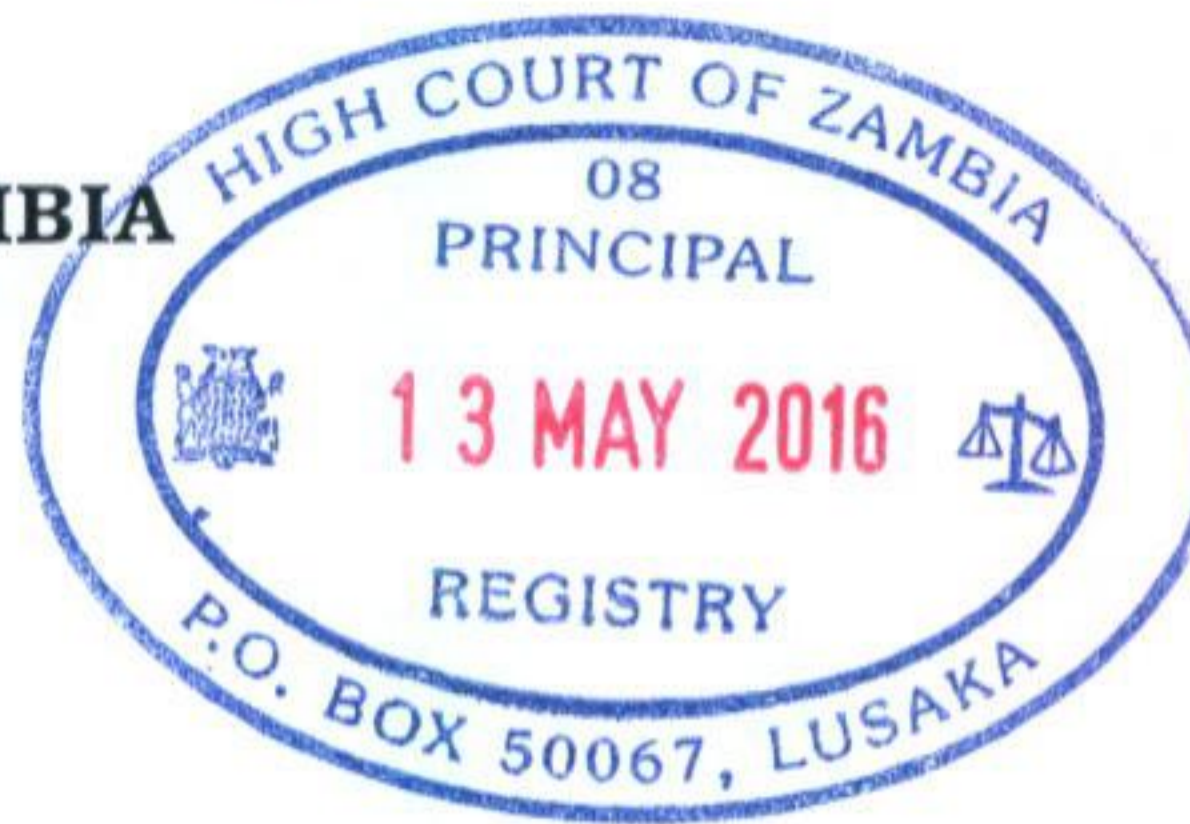


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IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)



2016/HP/0944

BETWEEN:

STEVEN KATUKA

APPLICANT

(Suing as Secretary General of the United Party for
National Development (UPND))

AND

ATTORNEY GENERAL

RESPONDENT

BEFORE HONOURABLE MRS. JUSTICE P. C. M. NGULUBE IN CHAMBERS

FOR THE APPLICANT : Mr Chikuta, Messrs Mumba Malila and Partners
: Mr Muchende, Dindi and Company

FOR THE RESPONDENT : Mr J. Simachela, Chief State Advocate
: Ms C. Mulenga, Principal State Advocate
: Mrs S. Sakala , Senior State Advocate

R U L I N G

Cases referred to:

1. Associated Provincial Picture House Ltd v Wednesbury Corporation (1948) 1KB 223;
2. Nyampala Safaris (Z) Limited and Others vs Attorney General and Others (2004) Z.R. 49 (S.C.)
3. Ster Kinekor v Attorney General (2011) 2 ZR.
4. WILLIAM HARRINGTON v DORA SILIYA ATTORNEY-GENERAL S.C.Z. Judgment Number 14 of 2011

Statute Referred:

- 1. The Public Order Act, Chapter 113 of the Laws of Zambia**
- 2. The Rules of the Supreme of the England**

This is a Ruling on the Applicant's application for leave to apply for Judicial Review in respect of the decision of the Officer in Charge, Riverside Police Station, Kitwe to cancel a political rally scheduled to be held on 14th May, 2016 at Freedom Park, Kitwe. The Applicant made an initial Ex Parte Application which I opted to hear inter parte due to the nature of matter.

The Statement on Ex parte Application stipulated the following reliefs;

1. A declaration that the decision by the Officer in Charge at Riverside Police Station, Kitwe to cancel the Political rally to be had by the UPND in Kitwe at Freedom Park on the 14th May, 2014 was unlawful .
2. An order of certiorari to remove into this Honourable Court for the purpose of quashing the decision of the Officer in Charge at Riverside Police Station, Kitwe herein to cancel the rally of the UPND aforesaid in the manner done or at all.
3. An order prohibiting the Officer in Charge a Riverside Police Station, Kitwe/or his subordinates and/or persons of like authority from doing anything that would give effect to the decision of the said Officer in Charge at Riverside Police Station, Kitwe to cancel the UPND political rally to be held in Kitwe as aforesaid.
4. If leave to apply is granted, a direction that such grant should operate as a stay of the decision to which this application states pursuant to Rule 3(10) (a) of Order 53 of the Rules of the Supreme Court AND THAT the Officer in Charge at Riverside Police Station, Kitwe's decision be stayed until after the hearing of the motion or summons or until further order.
5. Any other relief this Honourable Court may deem fit.
6. An Order that the costs of and occasioned by this application be paid by the Respondent to the Applicant.

The grounds upon which the reliefs were being sought were stated as-

1. The decision to cancel the holding of the political rally by the UPND herein, in the manner done or at all was wednesbury unreasonable or irrational;
2. The decision to cancel the holding of the said rally, having been made without authority, was illegal and

3. That the said decision is clothed with procedural impropriety in that a political competitor, the Patriotic Front was in the neighbourhood of the same time allowed to hold a political rally (earlier intended to be held in Lusaka) at the same venue where the Applicant's rally herein cancelled by the Police was to be held from.

In the Affidavit verifying the facts sworn by Stephen Katuka, the Secretary General of the United Party for National Development (UPND), deposed that by letter dated 5th April, 2016, the UPND notified Riverside Police Station of its intention to hold a political rally at Freedom Park in Kitwe on 14th May, 2016 which notification was acknowledged on 6th May, 2016.

That to the surprise of the party, the Zambia Police Service made a decision to cancel the political rally on the basis of correspondence from Kitwe City Council restricting political gatherings. Produced were copies of correspondence, marked "SK/1" and "SK2".

The Deponent stated that the Zambia Police have on the other hand allowed the Patriotic Front to hold a political rally of similar nature at the same venue around the same time that the UPND should have held its political rally. This was despite the notification of the UPND having been made earlier than that of the Patriotic Front.

That the decision to cancel the Political rally on the grounds advanced was illegal, unfair, undemocratic and ought to be rendered null and void.

The Deponent thus sought leave to apply for Judicial Review and added that the leave was to operate as a stay of the decision to cancel the intended political rally.

In the Skeleton Arguments filed in support, the Applicant contended that the in accordance with Order 53, the application for leave to apply for Judicial Review was properly before the Court as the decision to cancel the holding of the political rally by the UPND in the manner done was irrational, illegal and procedural improper. In so arguing, the Applicant relied on the cases of **Associated Provincial Picture House Ltd v Wednesbury Corporation (1948) 1KB 223; Nyampala Safaris (Z) Limited and Others vs Attorney General and Others (2004) Z.R. 49 (S.C.) and Ster Kinekor v Attorney General (2011) 2 ZR.**

During the hearing of the Application, Learned Counsel for the Applicant, Mr Chikuta submitted that the decision of the Police was illegal as section 4 (6) of the Public Order Act, only allows the Police to give one reason of being unable to police the event and no other was permissible by the Act.

Learned Co- Counsel, Mr Muchende further submitted relying on the case of **Christine Mulundika and Others v The Attorney General (1995)** that the decision of the police was not in furtherance of their obligation to maintain law and order but rather was in compliance with an instruction from the District Electoral Officer.

In relation to the assertion contained in paragraphs 6 and 7 of the Applicant's Affidavit in Support, Mr Muchende contended that no reasonable officer acting in the position of a Police Officer would come to the same decision and thus apart from being illegal it was unreasonable in the wednesbury sense. Further that the Officer in Charge failed to address his mind to subsection 7 of the Public Order Act.

In Response, the Learned Chief State Advocate relied on the Affidavit in Opposition to the application and submitted that following the Supreme Court Ruling earlier in the day in the Appeal of the **Law Association of Zambia vs Attorney General**, the Police have a right to deny the permit to convene a public gathering as long as reasons are furnished to the convenor. That the Police furnished reasons to the Applicant in this matter and gave alternative dates stated in "SK1" and "SK2".

Learned Chief State Advocate noted that the Police are mandated to enforce the provisions of the law and one such law was clause 8 of the Electoral Code, Statutory Instrument number 52 of 2011 which mandates the Electoral Commission of Zambia to prescribe the campaign period.

Further that, granting leave to the Applicant would prejudice other political parties who have been denied to convene meetings of a like nature on the basis of the election campaign period.

The Learned Chief State Advocate thus prayed that the Application be denied with costs.

By way of Reply, Mr Chikuta submitted that the decision of a Public Officer is to be viewed purely from the way it stands in reference to the guiding law. That the earlier decision of the Supreme Court of Zambia did not attempt to redefine the provisions comprised in the Public Order Act which provisions were still law. That the decision to cancel the intended public meeting on the basis of the electoral code and the failure to give alternative dates were illegal acts.

Mr Muchende added that there was no law that proscribed the holding of gatherings outside the campaign period. He reiterated that it was erroneous for the Police Officer to take into consideration matters not captured under the Public Order Act.

I have carefully considered the Affidavit evidence, skeleton Arguments and the Oral Submissions made by both parties. **Order 53 of the Rules of Supreme Court of England** gives guidance as to what falls for determination at leave stage of Judicial Review matters. The Learned Authors of the Rules of England direct under paragraphs 53/1-14/8 that-

"The purpose of the requirement of leave is:

(a) to eliminate frivolous, vexatious or hopeless applications for judicial review without the need for a substantive inter partes judicial review hearing; and

(b) to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further investigation at a full inter partes hearing."

I will not address the first requirement, save to say that I deemed it proper to hear the matter inter partes due to its nature. What falls for determination is the second limb of the requirements. In WILLIAM HARRINGTON v DORA SILIYA ATTORNEY-GENERAL S.C.Z. Judgment Number 14 of 2011, the Supreme Court stated as follows;

A party wishing to commence judicial proceedings must apply for leave to do so and must show that there is a case fit for further investigations at full inter partes hearing."

It therefore follows that for leave to be granted to the Applicant, I must satisfy myself that there is a question fit for investigations. The Applicant's base this application on the fact that the police objected to the convening of a political rally slated for 14th May, 2016 at Freedom Park in Kitwe. They contend that the decision to so refuse was illegal as it was not based on the provisions of the Public Order Act and that it was an unreasonable decision because the Police had granted like permission to the Ruling Party, the Patriotic Front on the same day. The Respondent on the other hand submit that the decision by the police was within the provisions of the law.

The relevant **provisions of the Public Order (Amendment) Act Number 1 of 1996 provide as follows-**

(4) Any person intending to assemble or to convene a public meeting, procession or demonstration shall notify the police in writing of such intent fourteen days before the meeting.

(5) The notice required under subsection (4) shall be in the prescribed form and shall contain an under taking by the persons intending to assemble or convene a public meeting, procession or demonstration that order and peace shall be maintained through the observance of the following conditions:...

(6) Where it is not possible for the Police to adequately police any particular public meeting , procession or demonstration, the regulating officer of the area shall, at least five days before the date of the public meeting, procession or demonstration, inform the conveners of the public meeting, procession or demonstration in writing the reasons for the inability of the Police to police the public meeting, possession or demonstration and shall propose an alternative date and time for the holding of such public meeting, procession or demonstration.

(7) Where the Police notify the conveners of a public meeting, procession or demonstration that it is not possible for the Police to adequately police any

proposed public meeting, procession or demonstration, such public meeting, procession or demonstration shall not be held.

(8) If the conveners of the public meeting, procession or demonstration are unsatisfied with the reasons given by the regulating officer under subsection (6) they may immediately appeal to the Minister who shall decide and inform the conveners in writing of his decision on the matter within a period of five days.

(9) Where any person is aggrieved by the decision of the Minister, that person may appeal that decision to the High Court within thirty days of the making of the decision.

Without delving into the merits of the case, I have noted from exhibits "SK1" and "SK2" that the Officer in Charge wrote the Applicant indicating his objection to the intended meeting on the basis of the campaign period stipulated by the Electoral Commission of Zambia. I am satisfied that this sufficed as reason for the Police inability to Police the intended public rally and such a reason does fall within Sub section 6 of the Public Order Act. I find difficult in accepting the Applicant's contention that there is only one reason which the Police can advance which is that of failure to police. Such an interpretation goes against the construction used by the legislature.

The Applicant's contended that the decision to cancel the public meeting was irrational in the light of the fact that they had granted another political party permission to convene a meeting of the like nature. It is apparent from the Affidavit in opposition of the Application that the Police equally objected to the Patriotic Front's intention to hold a public meeting on the basis of it being outside the campaign period. The Applicant did not dispute this position and I deem them as having conceded as well as abandoned the ground of irrationality.

Further, I hasten to add that Judicial Review is deemed as a course of last resort. Where there are other routes to be taken, the same ought to be taken before seeking Judicial Review procedure. The Authors of the Rules of the Supreme Court have put it thus;

"The courts will not normally grant Judicial Review where there is another avenue of appeal. "It is a cardinal principle that, save in the most exceptional circumstances [the jurisdiction to grant judicial review] will not be exercised where other remedies were available and have not been used."


Subsection 8 of the Public Order (Amendment) Act affords aggrieved convenors the right to appeal to the minister against the decision of an area officer. It is clear from the Affidavit evidence that the Applicant did not explore this avenue and therefore brought this matter before this Court without exhausting the available appeal procedure. There are no exceptional circumstances warranting this course of action, more so that the decision of the Officer in Charge was communicated on 6th May, 2016.

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Based on the foregoing, there is no question in this matter that is fit for further investigations so as to warrant the grant of leave to commence Judicial Review proceedings. This application fails for lack of merit and I accordingly dismiss it.

Costs to the Respondent.

Dated this 13th May, 2016


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P. C. M. NGULUBE
HIGH COURT JUDGE