

IN THE HIGH COURT FOR ZAMBIA 2016/HP/247
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



**IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA,
THE CONSTITUTION OF ZAMBIA
ACT, CHAPTER 1, VOLUME 1, OF
THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: ORDER 53 OF THE RULES OF
SUPREME COURT 1965, (WHITE
BOOK), RSC, 1999 EDITION,
VOLUME 1 AND VOLUME 2**

**AND IN THE MATTER OF: ARTICLE 21 OF THE
CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1, VOLUME 1, OF THE
LAWS OF ZAMBIA**

**AND IN THE MATTER OF: SECTION 13 (a) (b) AND (3) OF
THE SOCIETIES ACT, CHAPTER
119 OF THE LAWS OF ZAMBIA**

**AND IN THE MATTER OF: SECTION 12 OF THE STATE
PROCEEDINGS ACT, CHAPTER 71
VOLUME 6 OF THE LAWS OF
ZAMBIA**

**AND IN THE MATTER OF: AN APPLICATION FOR JUDICIAL
REVIEW**

AND IN THE MATTER OF:

**A PURPORTED DECISION OF THE
MINISTER OF HOME AFFAIRS OF
ZAMBIA MADE ON 4TH FEBRUARY,
2016 CONTAINED IN A
STATEMENT ISSUED DURING A
NEWS CONFERENCE AT HIS
OFFICE IN LUSAKA REVOKING
AND CANCELLING THE
CERTIFICATE OF REGISTRATION
OF THE DEMOCRATIC FRONT
PARTY**

BETWEEN:

**MORGAN NG'ONGA (MALE)
(Suing in his capacity as Secretary
General of the Democratic Front Party)**

APPLICANT

AND

THE ATTORNEY GENERAL

RESPONDENT

**Before the Hon. Mrs. Justice J.Z. Mulongoti
in Chambers on the 9th day of February, 2016.**

For the Applicant:

*Mr. Keith Mweemba of Messrs Keith Mweemba
Advocates*

R U L I N G

Cases referred:

1. Ridge v. Baldwin (1964) AC 40
2. Derrick Chitala (Secretary) of the Zambia Democratic Congress v. The Attorney General (1995 – 97) ZR 91

This is an ex parte application for leave to apply for judicial review. The application was by ex parte summons pursuant to order 53 of the Rules of the Supreme Court (White Book), 1999 edition. The ex parte summons was accompanied by a Notice containing a statement in support of ex parte application for leave to apply for judicial review, stating the reliefs sought by the applicant as follows:

1. A declaration that the Minister of Home Affairs acted unreasonably when he revoked and cancelled the Registration of the Democratic Front Party;
2. A declaration that the Minister of Home Affairs of the Government of the Republic of Zambia acted in excess and want of jurisdiction when he revoked and cancelled the Registration of the Democratic Front;
3. A Declaration that the Minister of Home Affairs does not have discretion to revoke and cancel the registration of a political party on the basis of internal discord of the said party as the same is in excess of his jurisdiction as limited by the provisions of section 13 (1) of the Societies Act, Chapter 119 of the Laws of Zambia;
4. And Order of Certiorari to remove into the High Court for the purposes of quashing the said decision of the Minister of Home Affairs whereby he revoked and cancelled the Certificate of Registration of the Democratic Front;
5. An Order of Mandamus to oblige the Minister of Home Affairs, through the Registrar of Societies to reinstate the Certificate of Registration of the Democratic Front in line with the provisions of section 10 (1) of the Societies Act, Chapter 119 of the Laws of Zambia.

6. The Applicant hereby requests a hearing of this application before the Judge pursuant to Rule 3/3 of Order of the Rules of the Supreme Court;
7. That the Applicant hereby is granted, a direction that such grant should operate as a stay of the decisions of the Minister of Home Affairs and further proceedings on the same pursuant to Rule 3 (10) (a) of the Rules of the Supreme Court.

And the grounds upon which relief is sought as follows:

(A) *ILLEGALITY*

- (i) The decision of the Minister of Home Affairs of the Government of the Republic of Zambia of 4th April, 2016 in so far as it purports to revoke and cancel the registration of the Democratic Front is illegal and as such void ab initio, as the Minister has no such powers that he purported to exercise.
- (ii) It is contended that the Minister of Home Affairs only has discretion to cancel registration of any society on the basis of the reasons provided for in Section 13 (1) (a) and (b) of the Societies Act, Chapter 119 of the Laws of Zambia. The reasons for cancellation are two-fold, firstly that the Society's objectives or that the society is likely to pursue, or be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia. The second reason for cancellation are that the interests of peace welfare or good order is likely to suffer prejudice by reason of the continued registration of a society.
- (iii) Arising from the foregoing, the reasons advanced by the Minister for cancelling the registration of the Applicant do not resonate with the lofty and noble provisions of section 13 of Cap 119 which are supposed to be invoked to safeguard against societies that may want to promote insurrection and anarchy and such grand vices in the Republic. The same internal discord within the Applicant pioneered by Mr. David Chanda, which has been clearly manufactured and precipitated by the Respondent does not fit the purposes that section 13 of Cap 119 was intended for.

(B) *PROCEDURAL IMPROPRIETY*

- (i) The decision of the Minister in cancelling the certificate of registration of the Democratic Front was procedurally improper because the provisions of Section 13 (3) of Cap 119 of the Laws of Zambia require a Society to be notified prior to cancellation of its registration. The said provision of the law further mandatorily requires that a society be given an opportunity to submit reasons why the registration should be cancelled. The conditional precedents were not observed by the Minister of Home Affairs and as such his decision is tinged with procedural impropriety and as such must be quashed.

(C) *UNREASONABLENESS*

- (i) The decision of the Minister of Home Affairs in so far as it purports to cancel the certificate of registration of the Democratic Front is Wednesbury unreasonable in so far as the reasons advanced point to the Minister intermeddling in the internal affairs of a society which latitude section 13(1) of the Societies Act, Cap 119 does not bestow on him.
- (ii) It is contended that the act by the Minister of constituting a Committee within his ministry to investigate the registration and internal dynamics of the Democratic Front Party, without hearing the said party is devoid of natural justice and is utterly in defiance of logic. The statement does not state who it is that has complained about the registration of the Applicant party and what their bonafides in the party are.
- (iii) As is obviously apparent, the decision of the Minister to cancel the registration certificate of the Applicant is Wednesbury unreasonable.

(D) *PROPORTIONALITY*

- (i) It is contended that in purportedly exercising a discretionary power to cancel the registration certificate of the Applicant, there was no reasonable relation between the objective sought to be achieved and the punishment imposed which was wholly out of proportion to the alleged internal discord within the Applicant party. The punishment meted out on the Applicant of de-registering it was the worst possible action that could be inflicted and is out rightly not proportionate.

- (ii) In the circumstances, it is contended that the court should quash the decision of the Minister of Home Affairs as it is not proportionate, as the said action is not appropriate, it is unnecessary and has imposed an excessive burden on the members of the Democratic Front.

Further, the Applicant asks for a stay of the decision of the Minister of Home Affairs to cancel the registration certificate of the Democratic Front under Order 53 Rule 3 of the Rules of the Supreme Court, 1999 Edition until after the determination of this Application so that it is not rendered an academic exercise.

The ex parte summons was also supported by an affidavit sworn by the applicant one Morgan Ng'ona dated 8th February, 2016. He deposed that he is the Secretary General of the Democratic Front Party. He was appointed as such by letter marked as exhibit 'MN1' authored by one Anthony Kasolo, the Acting Secretary General of the said party. And that the reasons advanced by the Minister of Home Affairs to cancel the certificate of registration are untrue as on 9th December, 2014 there was a change of office bearers of the party as well as a change of name per exhibit 'MN3'. The applicant further deposed that he had been advised by his advocates that the Minister does not

have the powers under the Societies Act, Chapter 119 of the Laws of Zambia, that he purported to exercise. Accordingly, that this is a right case for this court to grant him leave to apply for judicial review and that the same leave should operate as a stay. And that if an order of stay is not granted, the Democratic Front Party shall not be able to mobilise for voter registration, campaign and organise the party in this election year.

At the hearing, learned counsel for the applicant Mr. Mweemba submitted that at this stage there are four fundamental questions to be answered as follows:

The first being who can apply for judicial review? In answering this question, counsel submitted that it is any aggrieved person or body with sufficient interest or locus standi. The applicant being aggrieved has locus standi and is not a busy body. The second question is against who does judicial review lie? According to counsel it lies against persons or bodies exercising public law function. The cases of **Ridge v. Baldwin (1)** and **Derrick Chitala (Secretary of the Zambia Democratic Congress) v. The Attorney General (2)** were relied upon. It was argued that

the Minister of Home Affairs performs public functions and is thus amenable to judicial review. The third question according to counsel, is on what grounds can judicial review be granted or decisions challenged? Learned Counsel then stated the grounds as (i) illegality (ii) irrationality (iii) procedural impropriety and (iv) the emerging ground of proportionality. The last question being which areas of Law judiciary review is concerned with. Learned counsel contends that it is concerned with public and not private law. That the societies Act is public Law. According to counsel the Minister acted in bad faith as the provision he relied on required him to hear the other side before deregistration. And that where deregistration is by the Registrar of Societies, an appeal lies to the Minister. In casu, the Minister assumed power and acted in bad faith. Accordingly, that this is a proper case to grant leave ex parte and the same to act as a stay of the decision of the Minister. In addition that on the face of it, there are triable issues fit for substantive hearing.

I have considered the affidavit evidence and submission by counsel. Let me state from the outset that I am inclined to grant the applicant leave to apply for judicial review.

It is clear from the affidavit and the exhibit, in particular exhibit 'MN2' of the amended affidavit in support of ex parte summons for leave to apply for Judicial Review, that the Minister of Home Affairs cancelled the certificate of registration for the Democratic Front Party pursuant to section 13 (1) (b) of the Societies Act which is couched thus:

“13(1) The Minister may, in his discretion, cancel at any time the registration of any society effected under the provisions of section seven if he is satisfied that it is expedient so to do on the ground that
(b) the interests of peace, welfare or good order in Zambia would, in his opinion, be likely to suffer prejudice by reason of the continued registration of such party”.


Learned counsel for the applicant contends that the decision of the Minister is illegal and does not resonate with the provisions of the Act. Further, that there was procedural impropriety as the party was not given prior notice of cancellation of its registration. And that the decision was unreasonable.

I must state that at this stage of ex parte application for leave, I cannot delve into issues of whether the decision was illegal, unreasonable et cetera.

At this stage, my primary concern is whether the applicant has on the facts before me, demonstrated that he has an arguable case or a prima facie case fit for consideration at a substantive hearing for judicial review. Having perused the affidavit in support and the exhibits in particular 'MN2', I find that the applicant has demonstrated that he has.

In view of the foregoing, I grant the applicant leave to apply for judicial review. I order that the same should operate as a stay as prayed. To expedite the matter, I set Friday the 12th of February, 2016 at 15:00hrs for the substantive hearing.

Delivered at Lusaka this 9th day of February, 2016.



J.Z. MULONGOTI
HIGH COURT JUDGE