

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2004/HP/707

(CIVIL JURISDICTION)

IN THE MATTER OF

The Protection of fundamental rights,
Regulations, 1969

AND

IN THE MATTER OF

Articles 16,17 and 28(1) of the
constitution of Zambia

AND

IN THE MATTER OF

Sections 81, 84A, 84B and 101 of the
Banking & Financial Services Act

BETWEEN:

**IREEN KABWE
JEAN-PIERRE ROZAN
FRANCIS KAUNDA
AARON CHUNGU
FAUSTINE KABWE
ACCESS FINANCIAL SERVICES LTD
ACCESS LEASING LIMITED
ACCESS INSURANCE LTD
ACCESS INVESTMENTS LTD
ACCESS SECURITIES LTD**

**1st Petitioner
2nd Petitioner
3rd Petitioner
4th Petitioner
5th Petitioner
6th Petitioner
7th Petitioner
8th Petitioner
9th Petitioner
10th Petitioner**

AND

**THE BANK OF ZAMBIA
ATTORNEY-GENERAL**

**1st Respondent
2nd Respondent**

Before: E. M. Hamaundu, J



For the Petitioners : Mr J. Sangwa, S.C., Messrs Simeza
Sangwa & Associates Advocates

For the 1st Respondent: Mr M. Nchito & Mr A. Hamweela, Messrs
Nchito & Nchito

For the 2nd Respondent: Attorney General (Not present)

RULING

This application is by the 1st respondent for security for costs. When the formal application was filed, the 1st respondent sought an order for security for costs, specifically against the 1st and 2nd petitioners, on the sole ground that they both reside outside the court's jurisdiction. At the hearing of the application, however, learned counsel for the 1st respondent pointed out that there had been a multiplicity of actions by the petitioners whose aim has been to fore-stall the power of the 1st respondent deal with an errant bank. It was pointed out that several issues which have been raised in this matter have been dealt with by other courts. It was also pointed that the 2nd petitioner has since died, but that the petitioners still purport to act with him. It was further pointed out that, indeed, the 1st and 2nd petitioners were ordinarily resident outside the jurisdiction. Finally, it was pointed out that the only motivation that the

petitioners had for maintaining this action was their desire to obtain an injunction in order to stop the 1st respondent from doing its work; and that if they failed to obtain that injunction they were likely to ignore this matter; meanwhile the 1st respondent would have been put to significant costs. For the foregoing reasons, counsel argued that this was an appropriate matter for the court to grant an order for security for costs.

Opposing the application, learned counsel for the petitioners argued that the application has no foundation at law because, while **Order 40 rule 7** of the **High Court rules** empowers the court to order a party to give security for costs in a suit, this matter is not a suit but a petition which was filed pursuant to the right granted to a party to move the court under **Article 28** of the **Constitution**. It was argued that entertaining this application will amount to the negation of the enforcement of the entire Bill of rights in the Constitution.

Responding to the submission on the death of the 2nd petitioner, counsel submitted that an appropriate application would be made subsequently, but that for now there were more pressing applications that had to be made. On the 1st respondent's argument that there had been a multiplicity of actions, learned counsel argued that all the

other actions had been for judicial review while this matter was a petition to redress infringements on the petitioners' rights; an issue which had never been raised in the other matters.

Responding to the argument that the first two petitioners are resident outside the jurisdiction, counsel argued that the other petitioners were resident in Zambia and their claims were indivisible from those of the first two petitioners.

In reply, learned counsel argued that any action which is before the court is a suit and that therefore, this matter is also a suit.

I will address myself only to the arguments regarding the nature of this matter. I agree with the argument that this matter stands in a special position in that it originates from the provisions of **Article 28** of the **Constitution of Zambia**. Indeed, in terms of procedure, the petitioners rely on the **Protection of Fundamental Rights Rules, 1969**. These are rules that provide a party seeking to move the court under **Article 28** of the **Constitution** with the procedure by which he will prosecute his grievance. The rules lay down the procedure from commencement of the matter, up to the hearing. I agree that, going by the nature of the redress that is ordinarily sought when one moves the court under **Article 28** of the **Constitution**, it would not

be appropriate to order an aggrieved petitioner to pay security for costs. On that ground, I dismiss the application, with costs to the 1st, 2nd, 3rd 4th and 5th petitioners.

Dated the^{10th}.....day of^{May}.....2018

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E. M. Hamaundu
JUDGE