

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
(Civil Jurisdiction)

2017/HP/204

IN THE MATTER OF: THE PROTECTION OF FUNDAMENTAL RIGHTS
AND

IN THE MATTER OF: ARTICLES 8, 13, 15.16, 18, 23, AND 26 OF
THE CONSTITUTION OF ZAMBIA

AND IN THE MATTER OF: THE MENTAL DISORDERS ACT, CHAPTER 305
OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE PERSONS WITH DISABILITIES ACT NO.6
OF 2012

IN THE MATTER BETWEEN:

GORDON MADDOX MWEWA

1st PETITIONER

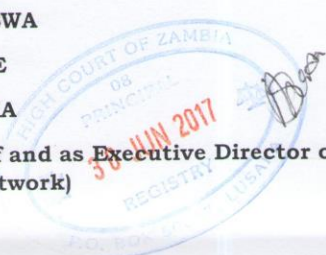
MULIMA SANTE KASOTE

2ND PETITIONER

SYLVESTER KATONTOKA

3RD PETITIONER

(Suing on his own behalf and as Executive Director of the
Mental Health Users Network)



AND

ATTORNEY GENERAL

1ST RESPONDENT

ZAMBIA AGENCY FOR PERSONS WITH DISABILITIES

2ND RESPONDENT

DISABILITY RIGHTS WATCH

AMICUS CURIE

2ND RESPONDENTS SUBMISSIONS

STATUTES

1. Constitution of Zambia(Amendment) No.2 of 2016
2. Persons with Disabilities Act, No 6 of 2012

CASE LAW

1. *Zambia National Holdings Limited and United Independence party v The Attorney General* (1994) Z.R 115.
2. *Kelvin Hangandu and Webby Mulubisha* (2008) 2 ZR 82

IF IT MAY PLEASE this honourable court these are the 2nd Respondent's submissions

1. **Functions of the Zambia Agency for persons with Disabilities**

1.1 The 2nd Respondent submits that it is a creation of statute specifically the Persons with Disabilities Act No. 6 of 2012 whose purpose is "an act to continue the existence of the Zambia Agency for persons with Disabilities and define its functions and powers".

1.2 The functions of the Zambia Agency for persons with Disabilities are provided for in section 14 the Act. In relation to the petition that is before this honourable court includes among others:

(m) Advise the Minister on matters relating to social and economic development and general welfare of persons with disabilities;

(n) Monitor and evaluate the provisions of services to persons with disabilities and implementation of this Act and any policy or national strategy;

(o) Identify provisions in any law that hinders implementation of this Act and any policy or national strategy on disability and recommend necessary reforms to the government;

(p) Advise relevant state organs and institutions on provision of equal opportunity and empowerment programmes and facilities to persons with disabilities.

1.3 The 2nd Respondent submits that functions of the Agency are limited to **advising**, and **recommending**. Further as it relates to monitoring such monitoring is also limited to monitoring provision of services to persons with disabilities and also implementation of the persons with Disabilities Act, policy and national strategy. There is nowhere in the said functions where the 2nd Respondent is mandated to monitor enforcement of judgements.

2. **The Courts Jurisdiction**

2.1 Article 134 of the Constitution confers on the Court "unlimited and original jurisdiction in civil and matters".

2.2 The Supreme Court interpreted article 134 of the constitution that "the power of the court though unlimited is not limitless and must be exercised within the confines of the law".

Zambia National Holdings Limited and United Independence party v The Attorney General (1994) Z.R 115.

Kelvin Hangandu and Webby Mulubisha (2008) 2 ZR 82

- 2.3 The 2nd Respondent submits that as regards this petition the court can only compel the 2nd Respondent to perform a function as provided for under the establishing statute the persons with disabilities Act No 6 of 2012

3. Power of the court to make Orders

- 3.1 Article 28 of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No.2 of 2016, the Court is empowered to “make such orders, issue such writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions..”
- 3.2 The 2nd Respondent submits that the court cannot however make orders which are untenable or unenforceable. An order requiring the 2nd Respondent to render a report to the court within 6 months is untenable as there is no law that provides for such a procedure.
- 3.3 The 2nd Respondents further relies on the case ***Zambia National Holdings Limited and United Independence party v The Attorney General (1994) Z.R 115***. Where the guided by the Supreme Court that the High Court must comply with law
- 3.4 Further the constitution of Zambia is premised on the notion of separation of powers
- 3.5 Article 62 (2) of the constitution confers “legislative authority” on Parliament.
- 3.6 The 2nd Respondents submits that they have no objection to the petitioners seeking the said declaratory reliefs. The 2nd Respondent further submits that in the event that the Court grants the said reliefs, for the said reliefs to take effect, it will require Parliament’s intervention. An order requiring the 2nd Respondent to ensure and monitor that Parliament undertakes the said action within a period of 6 months is tantamount to interfering with the exercise of their power and against the principle of separation of powers. Further it will be undertaking a function outside those provided for under the Persons with Disabilities Act No 6 of 2012.

4. PRAYER

- 4.1 In light of the above submissions it is the 2nd Respondent prayer that the orders being sought against the 2nd Respondent be dismissed.

Dated this

day of

2017.

Per Chanda

Messrs ChandaChizu & Associates
Suite 3, Stand 1136, Church Road
P O Box 51184 RW
Email: frontdesk@chandachizu.com

LUSAKA

ADVOCATES FOR THE 2ND RESPONDENTS

TO: Mushota & Associates
Plot 17019, Off Thabo Mbeki Road
Mass media Area
Email: mushota.associates@gmail.com

LUSAKA

Advocates for the Plaintiffs

Attorney general Chambers
Ministry of justice
Fairley Road

LUSAKA

Advocates for the 1st Respondent

Legal Resource Chambers
16th Floor indeco House
Western Wing Buteko Place
Cairo Road

Email: Irf@zamtel.zm

Advocates for the Amicus Curie