

The Constitutional Crisis Created by the Interpretation in the Case of The People Vs. Attorney General (Ex-Parte Nickson Chilangwa) – 2024/CCZ/R001

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ABSTRACT

This article critically examines the Constitutional Court's decision in *The People v Attorney General (Ex Parte Nickson Chilangwa)* 2024/CCZ/R001, a case that has sparked significant debate over the interpretation of disqualification provisions in the Zambian Constitution. While the Court adopted a strict textual approach—holding that imprisonment alone, regardless of an appeal, triggers automatic disqualification and a parliamentary vacancy—we argue that this interpretation undermines core principles of constitutionalism. Drawing on the doctrines of purposive interpretation, proportionality, and the presumption of innocence, the article contends that the ruling sacrifices fairness, democratic representation, and the rule of law in favour of expediency. Particular attention is given to the doctrine of legality, which requires that public power be exercised rationally, non-arbitrarily, and in conformity with constitutional values. The paper concludes that constitutional adjudication in democratic societies must preserve not just the letter, but also the spirit of the Constitution.

INTRODUCTION

Zambia's constitutional democracy is grounded in the sovereignty of the people, exercised through periodic elections. Members of Parliament (MPs) are elected under a first-past-the-post system in accordance with Article 47(2) of the Constitution (Amendment Act No. 2 of 2016), and serve five-year terms under Article 56(1), unless disqualified by constitutional grounds.

In the 2021 elections, Hon. Nickson Chilangwa was elected to represent Kawambwa Constituency. Following politically sensitive incidents, he was convicted in July 2024 and sentenced to five years' imprisonment. Despite appealing the conviction and seeking a stay, the Speaker declared his seat vacant. The Electoral Commission of Zambia (ECZ) moved forward with a by-election, prompting constitutional litigation.

The key question was whether a conviction under appeal could trigger automatic disqualification. The Constitutional Court answered yes, holding that Articles 70(2)(f) and 72(2)(b) cause an MP's seat to become vacant immediately upon sentencing. This strict textual interpretation has sparked significant concern about its implications for electoral rights, legal due process, and constitutional fairness.

This article critically evaluates that judgment, arguing for a more holistic approach rooted in purposive interpretation, proportionality, and the rule of law—consistent with Zambia's democratic and constitutional ideals.

PROCEDURAL BACKGROUND

The dispute in *Ex Parte Nickson Chilangwa* arose after Hon. Chilangwa was convicted on 22 July 2024 for political violence and sentenced to five years' imprisonment by the Subordinate Court in Kawambwa. He immediately filed an appeal and applied for bail, which was denied, though his appeal remained active.

Despite the pending appeal, the Speaker declared his parliamentary seat vacant under Article 72(2)(b), citing Article 70(2)(f), which disqualifies individuals “serving a sentence of imprisonment” from election. This raised constitutional concerns, as the cited provisions refer to electoral disqualification, not the automatic removal of a sitting MP.

Chilangwa challenged the decision in the Chinsali High Court, which issued a stay. However, the Electoral Commission of Zambia (ECZ) proceeded with by-election preparations. Recognizing the legal complexity, the High Court referred the matter to the Constitutional Court for interpretation.

At stake was whether an appeal-suspended conviction could cause immediate disqualification and if such vacancy declarations were judicially reviewable. The case thus exposed tensions between textual interpretation, administrative authority, and constitutional protections—laying the groundwork for a pivotal ruling.

THE CONSTITUTIONAL COURT JUDGMENT

On 10 February 2025, the Constitutional Court ruled in *The People v Attorney General (Ex Parte Nickson Chilangwa)*, holding that an MP automatically loses their seat upon conviction and sentencing to a term of imprisonment exceeding three years, even if the conviction is under appeal.

The Court interpreted Articles 70(2)(f) and 72(2)(b) literally, concluding that the vacancy is triggered “by operation of law” and requires no further judicial or administrative action. It emphasized the need for parliamentary integrity and certainty, asserting that the disqualification is self-executing and not subject to judicial review.

Notably, the Court gave little weight to the active appeal or to principles like fairness or the presumption of innocence. Its judgment prioritized textual clarity and administrative efficiency over procedural justice or democratic representation.

Rebuttal from Precedent: *In Re Liso* (1969)

The Court’s strict interpretation contrasts sharply with Zambia’s own precedent. In *In Re Liso* [1969] ZR 6, the Court of Appeal ruled that a disqualification based on a sentence that is later quashed becomes void retrospectively. There, an MP’s seat was declared vacant following a 12-month sentence, which was later reduced. The Court ordered reinstatement, affirming that disqualification should only apply if the conviction is final.

This earlier case adopted a purposive and fairness-oriented interpretation, recognizing that automatic disqualification based on a conviction under appeal risks undermining justice. It supports the view that constitutional consequences must follow legal finality—not interim outcomes.

The Constitutional Court in *Chilangwa*, however, dismissed this precedent and entrenched a formalistic approach that allows irreversible political consequences even when a conviction may later be overturned.

CRITIQUE UNDER CONSTITUTIONAL PRINCIPLES

The Constitutional Court’s decision in *Ex Parte Nickson Chilangwa* reflects a narrow, literalist reading of the Constitution. However, constitutional adjudication demands more than textual fidelity—it requires alignment with principles that preserve justice, fairness, and democratic integrity. This section critiques the ruling through three lenses: purposive interpretation, proportionality, and the presumption of innocence.

Purposive Interpretation

A purposive approach considers the objectives behind constitutional provisions. Disqualification clauses aim to protect the integrity of Parliament—not to punish individuals whose legal status is unsettled. By disregarding this context, the Court failed to safeguard electoral justice.

In *In Re Liso* (1969), Zambia’s courts applied a purposive method. When a sentence that had caused disqualification was later quashed, the MP was reinstated. The Court recognized that only a **final conviction** should carry such serious constitutional consequences.

Proportionality

The doctrine of proportionality demands that restrictions on rights be the least severe means to achieve legitimate aims. Automatically vacating a seat before an appeal is decided imposes severe and irreversible harm: it removes an elected representative, disenfranchises voters, and expends public resources—possibly unnecessarily.

A proportionate alternative would have been **temporary suspension** pending appeal. This would have preserved public trust in Parliament while respecting due process.

Presumption of Innocence

The Constitution (Article 18(2)(a)) guarantees the presumption of innocence until all appeals are exhausted. The Court’s decision ignores this principle by imposing a permanent sanction on a conviction that is still legally unsettled.

As seen in *S v Zuma* (1995, South Africa), even procedural convenience must yield to this fundamental right. Constitutional disqualifications should not bypass this core protection.

Comparative Summary: In Re Liso vs. Ex Parte Chilangwa

Issue	In Re Liso (1969)	Ex Parte Chilangwa (2025)
Finality of Conviction	Required for disqualification	Not required; disqualification applies immediately
Effect of Appeal	Reversal nullifies disqualification	No reversal; vacancy remains even if conviction is overturned
Judicial Review	Speaker’s decision reviewable and reversible	Declared automatic and immune to review
Interpretation Approach	Purposive, fairness-oriented	Strict textualism
Presumption of Innocence	Respected until appeal resolved	Disregarded upon initial conviction
Remedy for Misapplication	Reinstatement via mandamus granted	No remedy provided
Impact on Democratic Representation	Voter mandate preserved until legal finality	Voter mandate overridden prematurely

Clarity and Precision of Law

Legal certainty is a cornerstone of the rule of law. Constitutional provisions—especially those affecting political rights—must be clear, precise, and contextually interpreted. Article 70(2)(f) disqualifies anyone “serving a sentence of imprisonment,” yet it is silent on whether such disqualification applies during a pending appeal.

The Constitutional Court interpreted this silence to mean that disqualification takes effect immediately upon sentencing, regardless of appeal. This reading ignores the legal distinction between a provisional and final conviction—a distinction emphasized in *In Re Liso* (1969), where the Court of Appeal recognized that a conviction under appeal remains unsettled, and any disqualification is reversible if the sentence is quashed.

Comparative jurisprudence, such as *Matatiele Municipality v President of South Africa* (2007), affirms that ambiguous laws should be interpreted to preserve rights—not restrict them without justification.

By adopting a literalist approach, the Court prioritized administrative certainty over legal clarity and coherence. This risks absurd outcomes—such as vacating a seat based on a conviction that could soon be overturned—ultimately undermining both justice and constitutional predictability.

Non-Arbitrariness

The rule of law prohibits arbitrary use of public power—particularly when fundamental rights or democratic institutions are at stake. In a constitutional democracy like Zambia, decisions must be lawful, reasoned, and open to judicial scrutiny.

In *Ex Parte Chilangwa*, the Constitutional Court held that disqualification upon conviction is “self-executing” and not reviewable. This insulates the Speaker’s and ECZ’s decisions from challenge—even when they rest on a conviction still under appeal. Such a stance places constitutional actors above accountability, violating both the spirit and the letter of the rule of law.

This contradicts the principle laid down in *Pharmaceutical Manufacturers Association v President of South Africa* (2000), where all exercises of public power were deemed subject to legal review. It also violates Article 118(2) of the Zambian Constitution, which guarantees access to justice and impartial adjudication.

Declaring that a Speaker’s action is not a decision avoids scrutiny of administrative power. Yet any action that applies law to fact and produces legal consequences—such as removing an elected MP—must be reviewable. Shielding it creates a zone of constitutional impunity.

In politically sensitive contexts, this opens the door to selective prosecutions or timed convictions aimed at undermining elected opposition. Judicial oversight is essential to prevent such abuse.

In short, the Court’s refusal to allow review of disqualification decisions undermines constitutional accountability. Legality requires transparency, reasonableness, and oversight—standards the ruling in *Chilangwa* failed to meet.

Due Process and Legal Redress

Procedural fairness is a cornerstone of constitutional democracy. The Zambian Constitution, under Article 18, guarantees the right to a fair hearing, while Article 118(2) requires justice to be delivered without delay or denial. This includes the right to challenge adverse actions by public officials—especially when they affect democratic representation.

In *Ex Parte Chilangwa*, the Constitutional Court effectively barred judicial review of the Speaker’s declaration of vacancy once a conviction was recorded, even though that conviction was under appeal. This closure of legal recourse amounts to a denial of due process and undermines the right to contest unconstitutional or premature disqualification.

Zambian precedent—*In Re Liso* (1969)—makes clear that legal consequences flowing from a conviction must be reversible if the conviction is overturned. There, the Court held that once a sentence was quashed, the MP had not ceased to be a member of Parliament. Importantly, it affirmed that such declarations by the Speaker were subject to judicial remedies like mandamus.

By contrast, *Chilangwa* treated the vacancy as final and immune from oversight, even in the face of a pending appeal. This not only violates due process but also erodes public confidence in the legal system’s capacity to correct injustice.

Constitutional law must offer more than procedure—it must provide accessible remedies to challenge the misuse of those procedures. Ignoring the precedent of *In Re Liso* was not just an oversight—it was a failure to uphold the constitutional promise of justice.

Conformity with Constitutional Values

The rule of law demands not just legal compliance but alignment with constitutional values such as justice, fairness, dignity, political participation, and accountability. The Zambian Constitution—particularly in its Preamble, Article 8, and Article 45—envisioned a democratic legal order rooted in human rights and inclusive governance.

In *Ex Parte Chilangwa*, the Constitutional Court focused narrowly on literal interpretation of Articles 70(2)(f) and 72(2)(b), neglecting broader constitutional principles. This formalist approach disregarded how automatic disqualification, based on a non-final conviction, undermines the spirit of representative democracy, the presumption of innocence, and access to justice.

This departure stands in contrast to regional and Zambian jurisprudence. For instance, the South African Constitutional Court in *Doctors for Life International* (2006) stressed that constitutional interpretation must reinforce political inclusion and democratic values. Similarly, in *Pharmaceutical Manufacturers* (2000), legality was interpreted as requiring reasonable, fair, and value-aligned public action.

Table: Constitutional Values Undermined in *Ex Parte Chilangwa*

Constitutional Value	Constitutional Basis	How the Court's Ruling Violated It
Presumption of Innocence	Article 18(2)(a), Constitution of Zambia	Treated a non-final conviction as conclusive, preempting the appeal process
Political Participation	Article 45	Disqualified an MP elected by popular vote without final adjudication, nullifying the electorate's will
Access to Justice	Article 118(2)	Blocked judicial review of the Speaker's declaration, insulating constitutional error from correction
Substantive Fairness	Article 8 (c) – Equity, Social Justice, Fairness	Prioritized text over context, ignoring fairness in democratic representation
Democratic Legitimacy	Preamble & Articles 45, 47	Allowed procedural technicality to override electoral mandate

In contrast to the fairness-oriented ruling in *In Re Liso* (1969), where judicial remedies ensured procedural justice, the *Chilangwa* judgment elevates form over substance. If replicated, this precedent could weaken Zambia's democratic legitimacy by allowing politically expedient exclusions through unfinalized convictions.

Proportionality and Rationality

The rule of legality also requires that state actions be not only lawful but rational and proportionate to the aims they seek to achieve. Rationality ensures that public decisions bear a logical connection to legitimate constitutional objectives, while proportionality ensures that rights are not infringed more than is necessary to meet those objectives. These twin concepts are essential checks on overreach, particularly when fundamental rights or democratic institutions are at stake.

In *Ex Parte Nickson Chilangwa*, the Constitutional Court upheld the removal of a sitting MP based on a conviction that was under appeal, with no regard for the consequences if that conviction were later overturned. This approach fails both the **rationality** and **proportionality** tests.

Lack of Rationality

There is no rational justification for permanently removing a Member of Parliament on the basis of a conviction that is not final. If the purpose of Article 70 (2) (f) is to protect the integrity of Parliament by disqualifying individuals who have been lawfully and conclusively convicted of serious offences, then applying it before appellate confirmation undermines that very goal. The risk is not one of unfitness for office, but of error—yet the Court allows the error to stand unchallenged. As held in *Pharmaceutical Manufacturers Association v President of South Africa (2000)*, public power must be exercised with a rational link between means and purpose. Here, that link is tenuous at best.

Disproportionate Consequences

The consequences of automatic disqualification are severe and irreversible: a parliamentary seat is declared vacant, a by-election is scheduled, and public funds are expended. More critically, the will of the electorate is disregarded before the legal status of their chosen representative is settled. This is a textbook case of constitutional overreach.

Proportionality demands that less intrusive alternatives be considered—such as suspension of parliamentary duties pending appeal. Such an approach would strike a more balanced compromise between maintaining institutional integrity and respecting individual rights. In *S v Makwanyane (1995)* and *R v Oakes (1986)*, courts in South Africa and Canada respectively affirmed that even constitutionally sanctioned limitations on rights must pass a test of necessity and minimal impairment. The Chilangwa judgment fails this test.

Furthermore, by insulating this outcome from judicial review, the Court adds another layer of disproportionality: it removes the safety valve through which injustices might be corrected. This leads to the paradoxical result of constitutionally compliant injustice—an outcome that is legally enforceable but substantively wrong.

Thus, when assessed through the lens of proportionality and rationality, the ruling in *Chilangwa* reveals a constitutional imbalance. It reflects a rigid, mechanistic view of public power, rather than one informed by prudence, justice, and the lived realities of political life in a constitutional democracy.

DEMOCRATIC REPRESENTATION AND CONSTITUTIONAL VALUES

At the core of Zambia's constitutional system is the principle of **representative democracy**, where authority flows from the people through elected officials. This principle is enshrined in Article 45, which calls for democratic governance, participation, and respect for the people's will.

In *Ex Parte Chilangwa*, the Court's interpretation of Articles 70(2)(f) and 72(2)(b) effectively **overrode the electorate's mandate** by removing a sitting MP based on a conviction that was not final. This ruling treats the electoral voice of the people as secondary to rigid proceduralism.

Democratic representation is not a privilege—it is a right conferred through elections. Stripping it away prematurely denies voters meaningful participation and risks converting judicial processes into tools for political exclusion.

Comparative jurisprudence, such as *Doctors for Life International v Speaker of the National Assembly (2006)*, emphasizes that democracy is more than voting—it's about inclusive participation. Similarly, *In Re Liso (1969)* demonstrated that procedural actions must align with democratic legitimacy. The reinstatement of the MP in *Liso* was not just a legal remedy—it was a restoration of the electorate's choice.

By contrast, the **Chilangwa** decision:

- **Disregarded the electorate's will**, removing their chosen representative without legal finality.
- **Prevented judicial correction**, treating premature disqualification as irreversible.
- **Enabled disenfranchisement**, not just of the MP, but of thousands of constituents.

Such an approach weakens confidence in the political system and may incentivize **strategic prosecutions** to unseat opponents. In a constitutional democracy, **due process and electoral will must co-exist**—not compete.

Ultimately, democratic legitimacy demands more than constitutional formality. It requires a commitment to the values that sustain democracy: accountability, fairness, representation, and trust.

In the *Chilangwa* judgment, however, the Court allowed constitutional functionaries to override a pending judicial process and trigger irreversible electoral consequences, all without the safeguard of legal challenge. This is a dangerous precedent. It risks normalizing a situation where representation can be disrupted by a first-instance conviction—even if that conviction is later found to be flawed or politically motivated.

In essence, democracy is not just about the rule of the majority, but also about **protecting the rights of minorities, dissenters, and the accused**. It is about ensuring that constitutional mechanisms are used to uphold, not erode, the voice of the people. The decision in *Chilangwa*, though procedurally neat, is democratically impoverished.

CONCLUSION

Reclaiming Constitutional Justice

The Constitutional Court's decision in *The People v Attorney General (Ex Parte Nickson Chilangwa)* marks a troubling departure from Zambia's constitutional and democratic ethos. By interpreting Articles 70(2)(f) and 72(2)(b) to mean that a Member of Parliament is automatically disqualified upon conviction—even when that conviction is under appeal—the Court prioritized procedural finality over constitutional fairness and democratic representation.

As this article has shown, the ruling undermines three core constitutional principles: the **presumption of innocence**, **proportionality in the limitation of rights**, and the **right to democratic participation**. It effectively strips both individuals and constituencies of their political rights based on a legal outcome that may be overturned, and closes the door to judicial review—undermining legal accountability.

In contrast, the precedent set in *In Re Liso* (1969) reflected a more principled path: one that respected due process, preserved electoral legitimacy, and allowed for constitutional error to be corrected through legal remedies. *Liso* stands for the proposition that **finality of conviction** is essential before disqualification can justly occur, and that **judicial oversight** remains a vital check on public power.

The Court in *Chilangwa* instead embraced a formalist interpretation that risks politicizing judicial outcomes, enabling strategic disqualifications, and eroding public trust in both Parliament and the judiciary. In a fragile democracy, the consequences are profound—not just for the MP involved, but for the entire democratic system.

RECOMMENDATIONS

1. **Reaffirm Legal Finality** Future rulings should clarify that disqualification under Article 70(2)(f) applies only after all appeals are exhausted.
2. **Preserve Judicial Oversight** Declarations of vacancy by constitutional actors like the Speaker must remain subject to review—especially where rights are affected.

3. **Adopt a Proportional Response** Suspension of parliamentary functions, rather than automatic removal, offers a more balanced and rights-sensitive alternative.
4. **Legislative Clarification** Parliament should consider amending the Constitution or electoral laws to expressly link disqualification to final convictions.

Zambia's Constitution is not simply a legal document—it is a charter for democratic justice. Courts are not mere technicians of text; they are custodians of values. Upholding the **spirit of the Constitution** requires more than literal compliance—it requires courage, fairness, and fidelity to the ideals of democratic governance.

The ruling in *Chilangwa* should serve as a moment of reflection—and correction.

DISCLAIMER

The lead author of this article, Mr. Benjamin Mwelwa, is a practicing legal practitioner and a PhD Candidate at the University of Zambia (UNZA). However, this article is written purely for academic and scholarly purposes. The views, interpretations, and analyses expressed herein do not constitute legal advice, nor do they reflect the official position of any institution with which the authors are affiliated. Readers are advised to seek professional legal counsel for specific legal issues.

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