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**BRIEFING ON THE RULING OF PRELIMINARY OBJECTIONS ON A
CONSTITUTIONAL PETITION**

BETWEEN

PAUL REVOCATUS KAUNDA

VERSUS

**THE SPEAKER OF THE NATIONAL ASSEMBLY, MR. CECIL DAVID MWAMBE,
THE ATTORNEY GENERAL.**

MISC. CIVIL CAUSE NO. 10 OF 2020.

Introduction

Cecil David Mwambe was elected as a member of parliament in 2015 through CHADEMA but later on 15th February 2020 denounced his membership to join CCM. The Speaker of the National Assembly declined to announce his position as the Ndanda MP vacant despite the fact that the Secretary General of CHADEMA had written a letter informing him that Mr. Cecil Mwambe had lost the qualifications of being an MP following the provisions of Article 71(1)(f) of the Constitution of the URT. Paul Revocatus Kaunda being aggrieved by the action of the Speaker of the National Assembly as it violated Article 71(1)(f) of the Constitution filed a constitutional petition where the Attorney General filed preliminary objections culminating to this ruling.

The preliminary Objections raised by the Respondents:

1. The petition is unmaintainable in law for want of the petitioner's *Locus Standi*
2. That the Honorable Court did not have jurisdiction to entertain the petition as per Article 100(1) of the United Republic of Tanzania Constitution 1977, Section 3 of the Parliamentary Immunities Powers and Privileges Act
3. That the petition is bad in Law and incompetent for contravening the provisions of section 1(2),3,4,6(d) and 8(1) of the Basic Rights and Enforcement of Duties Act and Article 26(2) of the Constitution.
4. That the affidavit is incurable for contravening Order XIX Rule 3 of the Civil Procedure Code
5. The petition is incompetent and bad in law for being frivolous, vexatious and unjustifiable.

The court ruling;

Stephen Msechu-Managing Partner, Jeremiah Mtobesya-Litigation Partner, George Mollel-Partner
Pasience Mlowe-Partner

- a. The Court overruled the third preliminary objection by holding that since the cause of action arises from Article 71 of the constitution of the United Republic of Tanzania which is not within the purview of Article 30(3) of the Constitution then the said provisions in the preliminary objection are inapplicable.
- b. On the first preliminary objection that the petition is unmaintainable in law for want of the petitioner's locus standi the court overruled the same giving reason that the petitioner being a citizen of the United Republic of Tanzania has the necessary standing under Article 26(2) of the Constitution of the United Republic of Tanzania to institute a proceeding for violation of any provision of the constitution.
- c. The court also overruled the second preliminary objection that the Honorable Court had no jurisdiction with reason that the privileges and immunities under Article 100(1) of the Constitution of United Republic are limited to freedoms of thoughts, deliberations and procedures enjoyed in the formal transaction of business in parliament or its committees. By express provision of Article 83(1) b of the Constitution of Tanzania the decision of the speaker under the respective provision is subject to judicial review by the High Court. Therefore, the decision of the speaker is neither privileged nor immunized by any provision of the Constitution.
- d. The fifth preliminary objection was upheld by the Court that is the petition is incompetent and bad in law for being frivolous, vexatious and unjustifiable, the Court gave reason that the Constitutional proceedings are not expected to be pursued as alternatives to ordinary proceedings. They should be used as a matter of necessity and where the law does not provide for other avenues. The court suggested that the petitioner could have pursued a non-constitutional law remedy under Article 83(1) b of the United Republic of Tanzania Constitution 1977.
- e. The fourth preliminary objection was not discussed.

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