

Tuesday, 26th November, 2019

MINISTERIAL STATEMENT

ON

REPAYMENT OF MONEY TO GOVERNMENT FOLLOWING JUDGMENT OF
CONSTITUTIONAL COURT

BY

THE HON. MINISTER OF JUSTICE, MR LUBINDA, MP

Mr Speaker, I thank you most sincerely for according me this opportunity to address this august House.

Sir, I wish to address this august House on matters relating to the Constitutional Court order concerning hon. Ministers who remained in office prior to the 2016 General Elections.

The court order was to the effect that the hon. Ministers who remained in office prior to the 2016 general elections pay back the emoluments that were paid to them during the time when the National Assembly had been dissolved.

Mr Speaker, following my statements in the media clarifying the position on the repayment of money paid to individual hon. Ministers as a result of the judgment of the Constitutional Court, there have been numerous questions including questions from “Mr Questioner,” posed both inside and outside the House. You may recall that even last Friday, there were several related questions posed to Her Honour the Vice-President during the Vice-President’s Question Time. It is, therefore, only appropriate for me to clarify. I, therefore, now wish to update the House and the nation at large on the status of this very important matter.

Sir, in so doing, allow me to remind the House of the notorious fact that in this matter, there were two petitioners, namely the first petitioner, Mr Steven Katuka in his capacity as Secretary General of the United Party for National Development (UPND) and the second, the Law Association of Zambia (LAZ).

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Mr Speaker, the respondents were the Attorney-General, being the first respondent, Dr Ngosa Simbyakula and sixty-three named “others” being the rest. At page J83 of the judgment of the Constitutional Court, the court directed as follows:

“The emoluments paid to the sixty-four respondents from 12th May, 2016 to date, are to be agreed by the petitioners and the respondents. In default of such agreement, the matter shall be referred by either party for assessment by the Registrar of the Constitutional Court.”

Mr Speaker, as everyone is aware, there has not been any formal communication, and therefore, no agreement between the petitioners and the second to the sixty-fourth respondents on the matter nor on the amounts to be paid. For emphasis, so that there is no question, let me repeat.

As everyone is aware, there has not been any formal communication, and therefore, no agreement between the petitioners, namely the Secretary General of the UPND and LAZ on one hand and the second to the sixty-fourth respondents on the matter itself nor on the amounts to be paid. Instead, the petitioners, namely the UPND and LAZ, have both written to the Attorney-General demanding to know when the second to the sixty-fourth respondents would pay.

Mr Speaker, the Attorney-General, through the Debt Collection Unit in the Ministry of Justice, is the institution that is mandated to execute such orders. It is, therefore, the duty of the Ministry of Justice to execute the court order. As such, in its quest to execute, for the sake of the hon. Member for Katombola, meaning to collect the money from the second to the sixty-fourth respondent, the State, through the learned Attorney-General applied to the Registrar of the Constitutional Court for assessment in accordance with the court order as stated earlier. This is in order to determine what specific monies are liable to be paid back to the State by the affected sixty-four respondents.

Mr Speaker, as you may be aware, the second to the sixty-fourth respondents in this matter were sued in their individual capacities. As such, the court order to pay back the emoluments

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paid to the second to sixty-fourth respondents was against the individual respondents and not against the State. The obligation to pay back the money, therefore, rests on the individual respondents.

As the hon. Members and the general public may be aware, in its judgment, the Constitutional Court did state that the Constitutional provisions, which were the subject of the litigation, were capable of several interpretations. Specifically, the court stated *inter alia* as follows:

“In the case at hand, the expression to be interpreted is ‘until another person assumes the office of President,’ which is used in Articles 116(3)(e) and 117(2)(d). The words present some problems because when read in the context of other relevant provisions of the Constitution which are applicable to Ministers regarding their appointment, tenure and vacation of office, the phrase is ambiguous and obscure. Given its natural meaning, the literal interpretation of the provision leads to absurdity ...”

Mr Speaker, from the statement by the court, it is clear that there is a problem with the Constitutional provisions as they currently exist, because on one hand, the Constitution says hon. Ministers will be appointed from among hon. Members of Parliament, yet on the other, it appears to allow for the continuation of hon. Ministers in office after the dissolution of Parliament. The court additionally stated that:

“In the circumstances, the purposive rule of interpretation has to be applied to the relevant provisions of the Constitution as a whole to determine the intention of the Legislature on the expression ‘another person assumes office of President’ used in Articles 116(3)(e) and 117(2)(d). This is due to the fact that the expression is capable of more than one meaning as has been illustrated by the opposing arguments by the petitioners and the respondents.”

Mr Speaker, because of the finding of the court, that the wording of the Constitution is capable of more than one meaning, I would like to stress that no one person or hon. Minister may be deemed to have acted fraudulently or knowingly unconstitutionally. Until the Constitutional

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Court order was made, they believed to have been acting within the provisions of the Constitution. The court also stated that:

“Whereas in this case, the plain meaning of the words does not resolve this issue, resort should be made to the purposive approach. This is also in line with Article 267(1), which provides that the Constitution must be interpreted in line with its purposes and values, among others (J67-68).”

Sir, however, the Constitutional Court acknowledged that the plain and ordinary way of reading the Constitution is not helpful such that the court had to resort to what is known as purposive interpretation. The court also stated that:

“Articles 116(3)(e) and 117(2)(d), in their current form, cannot thus stand side by side with Articles 116(1) and 117(1), which provide for Ministers and Provincial Ministers respectively being appointed from within Parliament. Therefore, ‘we can only enjoin Parliament to address this ambiguity. (J69)’”

Sir, that enjoinder is provided for at page (J69) of the judgment. The fact that the court identified the need for Parliament to amend the Constitution means that there is a problem with the provisions of the Constitution that needs to be addressed.

Mr Speaker, for emphasis, following the judgment of the Constitutional Court in August 2016, and three (3) years down the line, the parties involved in the matter before the Constitutional Court have not yet agreed on either the quantum of what needs to be repaid. It is in this regard that the State directed the learned Attorney-General to apply for assessment of the amounts to be repaid. This is because the State respects the ruling and the finding of the court, that the second to the sixty-fourth respondents ought to pay back the emoluments they earned from 12th of May, 2016 until August when the ruling was passed.

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Sir, I wish to further emphasise, on behalf of all the respondents in this matter, that it is our Constitutional responsibility to uphold the law and defend the Constitution of Zambia. It is also the duty of the Executive to ensure that court orders are respected by all citizens of the country.

I thank you, Mr Speaker.