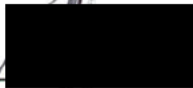


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2025-096565

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
8 August 2025	
DATE	SIGNATURE

In the matter between:

GOVERNMENT OF THE REPUBLIC OF ZAMBIA

Applicant

and

ESTHER LUNGU

First Respondent

BERTHA LUNGU

Second Respondent

TASILA LUNGU

Third Respondent

DALIESO LUNGU

Fourth Respondent

CHIYESO LUNGU

Fifth Respondent

CHARLES PHIRI

Sixth Respondent

MAKEBI ZULU

Seventh Respondent

TWO MOUNTAINS

Eighth Respondent

THE MINISTER OF INTERNATIONAL RELATIONS

AND COOPERATION

Ninth Respondent

Summary:

This judgment was prepared and authored by the Court whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 8 August 2025.

JUDGMENT

CORAM: LEDWABA AJP, MUDAU ADJP et POTTERILL J (THE COURT)

Introduction

[1] On 24 June 2025 the applicant, the Government of Zambia represented by the Attorney-General [the Government] launched this urgent application for an order, *inter alia*, seeking that the eighth respondent, Two Mountains [the funeral parlour] be ordered to keep and to preserve the body of the late President Lungu and not to remove or to dispose of it in any manner pending finalisation of the application seeking the repatriation of the body. The application was to be instituted on or before 22 July 2025. The funeral parlour did not partake in the proceedings. The ninth respondent, the Minister of International Relations and Cooperation, was joined and then removed, had notice of the application but chose not to participate. Nothing turns thereon.

[2] On 25 June 2025, this court, per Ledwaba DJP, pursuant to an agreement by the parties ordered that the funeral and burial of the late President Lungu be suspended pending the determination of the main application. The respondents opposed the main application and for ease of reference the first to sixth respondents are referred as the “Family” of the late President Lungu. The seventh respondent, Makebi Zulu [Mr Zulu], the late President Lungu’s attorney participated in negotiations between the Government and the Family but did not partake in the proceedings before us.

[3] Despite the above order by agreement between the parties, the Government brought an *ex parte* application on 2 July 2025, seeking to vary the consent order

granted by Ledwaba DJP. In the *ex parte* application the applicant alleged that the original order implicitly required the funeral parlour to continue caring for the late President Lungu's body indefinitely pending the hearing of this application. This application was granted. Bringing such an *ex parte* application is frowned upon by this Court.

[4] In the amended notice of motion the Government sought a declaratory order that it is entitled to repatriate the late President Lungu's body for a state funeral and burial thereafter in Embassy Park, Lusaka, Republic of Zambia. The funeral parlour is authorised and ordered upon demand by the Sheriff of this Court to surrender the body of the late President Lungu to a representative or representatives of the Zambia High Commission to enable the Government to repatriate the body to Zambia for a state funeral and burial. The Family is authorised to be present when repatriation is executed and an Aide De Camp, the late president's personal physician and two Family members (subject to such restrictions the applicant may reasonably impose), accompany the coffin containing the body of the late President Lungu during the repatriation.

[5] Both parties filed applications to strike-out certain phrases and/or paragraphs of the affidavits alleging that these allegations are vexatious, irrelevant and scandalous or constituted hearsay evidence. Furthermore, the Family filed an application for condonation for the late filing of a conditional counterclaim to declare an alleged agreement between the parties pertaining to the repatriation and burial void, if the court should find that such agreement was reached. The Government opposed this application for condonation.

Joinder application

[6] Mr Vincent Kafula, a Zambian national currently residing in Cape Town, sought to intervene in these proceedings on allegations that he has "a substantial interest in upholding the Constitution of Zambia, international human rights law, and the affairs of Zambia". He contends *inter alia* that, "what Zambia requires at this critical juncture is national reconciliation and the rectification of unconstitutional laws that undermine democratic principles. Although this court may lack direct jurisdiction, it can issue a

declaratory order to guide the Constitutional Court of Zambia in affirming and enforcing these necessary changes for the public good”.

[7] The test for joinder is whether the non-joined party has a direct and substantial interest, i.e. a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court. In that circumstance it is a necessary party and should accordingly be joined in such proceedings.¹

[8] Joinder, ordinarily, would occur to ensure that persons who have an interest in the subject matter of an existing dispute or have rights which may be affected by the judgment of the court in such a dispute are before the court. In argument Mr Kafula was constrained to concede that this Court has no jurisdiction over the Zambian courts and that the relief sought in that regard is incompetent. Mr Kafula thus has no direct and substantial interest in the relief sought. Furthermore, the question of joinder of Mr. Kafula on account of his Zambian nationality does not arise in this matter. This court dismissed the intervention application but made no order as to costs.

Common cause facts

[9] The late President Lungu served as President of the Republic of Zambia from January 2015 until August 2021, as the leader of a political party in the Republic of Zambia, called the Patriotic Front. The late President Lungu initially received the customary benefits accorded to former heads of state under the Zambian Benefits of Former Presidents Act, 1993. On 28 October 2023 when he announced his return to active politics his benefits were withdrawn according to section 5(1)(b) of the Act that provides as follows: “The pension and other benefits conferred by this Act shall not be paid, assigned or provided to a former President who is ... or (b) engaged in active politics”. The late President Lungu’s access to state security, housing, transport and medical support was terminated.

¹ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A); *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at 165-171; *Ex Parte Pearson and Hutton*, NNO 1967 (1) SA 103 (E) at 107C and *South African History Archive Trust v South African Reserve Bank and Another* 2020 (6) SA 127 (SCA) at para [30].

[10] The Benefits Act provides for pension and other retirement benefits of former Presidents of the Republic of Zambia. It also provides in Section 4(1)(b) set out in the Schedule to the Act, for the payment of a former President's funeral expenses.

[11] The late President Lungu arrived in South Africa on 19 January 2025 for medical treatment. The President unfortunately passed away on 5 June 2025. It is common cause that as a Zambian citizen Zambia was the late President Lungu's permanent place of residence. Following the announcement of the passing of the late President, the current President of Zambia, Mr. Hakainde Hichilema on 6 June 2025 dispatched a delegation of senior government officials led by the Zambian Minister of Foreign Affairs, Haimbe, and International Cooperation, to engage the Family and to discuss the logistics for the repatriation of the mortal remains of the late President to Zambia. Mr Zulu acted as spokesperson for the Family during these engagements.

[12] The delegation was informed, *inter alia*, that the Family wanted to conduct a post-mortem on 9 June 2025 that was supposed to be undertaken by a private pathologist from abroad. In addition, that, the Family was looking at departing Johannesburg, South Africa, for Lusaka, Zambia on Wednesday, 11 June 2025, aboard a private charter plane which the Family had already arranged. Also, the Family had planned to transport the body to Ndola, where the late President Lungu was born, Kitwe, where he lived during his formative years, and Petauke, where he hailed from. This was intended to provide the opportunity to the late President's supporters and friends to pay their last respects before proceeding to Lusaka. In addition, that Zambians living in South Africa had also requested the Family to allow for a Memorial Service in his honour since most of them would not be able to travel to Zambia for the funeral, a request that had been considered.

[13] Minister Haimbe thereafter conveyed to the Family the applicant's envisaged logistical arrangements, that the Applicant had following the privileges due to a former head of state when they pass on, declared seven days of national mourning beginning the date of death; the applicant would provide a military aircraft to transport the late President's mortal remains and mourners back to Zambia at the earliest possible date preferably the 7 or 8 June, 2025, arrange full military honours at send off and arrival in Lusaka. The Applicant committed to purchasing a lockable casket and to paying for all associated expenses relating to the funeral. It was conveyed that a burial place

would be prepared at Embassy Park, which is the designated burial site for all deceased Zambian Presidents. The Secretary to the Zambian Cabinet issued a Press Statement on 7 June 2025, in which he informed the Zambian public, inter alia, that the President of Zambia has accorded a state funeral to the late President Lungu, whose body will arrive in Zambia on Wednesday, 11 June 2025.

[14] There were further meetings that followed. A second delegation to negotiate with the Family was led by the Hon. Mr. Enock Kavindele, former Vice President of Zambia, accompanied by Mr. Lesley Mbula, former Secretary to the Cabinet and former Zambian High Commissioner to South Africa. Also included was Mr. Patrick Kangwa, Secretary to the Cabinet. On 10 June 2025 at City Lodge, Waterfalls, the delegation met with representatives of the Family. Mr Zulu again acted as the Family's spokesperson. From this meeting, it was agreed that the Family would purchase their preferred casket that was lockable; the Family would use a chartered aircraft, while government officials would use a Zambia Air Force aircraft that was on the ground for any eventualities.

[15] Annexure "FAA7" sets out what the parties agreed. For convenience, it is reproduced as is:

"Program for Repatriation, Funeral and Burial of the 6th Republican President,
Dr. Edgar Chagwai Lungu

Wednesday 18th June 2025:

- Departure of Body from Funeral Parlor to Lanseria Airport Arrival of body at Lanseria Airport Family and body depart Lanseria Aboard a Private Charter.
- Arrival at Lusaka and receiving of the Body at KKIA by the Family- Military honours
- Departure for the house in Chifwema where the body will lay (sic) in state.

Thursday 19th June 2025:

- Departure of Body from Funeral house in Chifwema to Mulungushi Conference Centre old wing.

-Prayer and commencement of body viewing from 09:00 to 16:00

- Return of the body to Chifwema to lay (sic) in state

Friday 20th June 2025

- Departure of Body from Funeral house in Chifwema to Mulungushi Conference centre, old wing.

- Prayer and commencement of body viewing from 09:00 to 16:00. Return of the body to Chifwema to lay (sic) in state

Saturday 20th June 2025 Departure of Body from the Funeral house in Chifwema to Mulungushi Conference centre, old wing. Prayer and commencement of body viewing from 09:00 to 16:00

-Return of the body to Chifwema to lay (sic) in state

Sunday 21" June 2025

-State Funeral at Mulungushi conference centre, hosting foreign dignitaries

Monday 22nd

-valedictory session at the Supreme Court Church service by Bishop Alick Banda at Showgrounds

- Burial

1. National mourning to be extended
2. The body to always lay (sic) in state at Chifwema
3. The body to always be accompanied by a relative, the ADC, and Dr
4. Parties will consult and agree on who speaks at all events.
5. Hon. Given Lubinda to speak on behalf of the Patriotic Front Party".

[16] Mr Zulu in a separate televised briefing confirmed the agreement, *inter alia*, firstly that the body of the late president Lungu shall be transported together with the

Family from Lanseria airport in South Africa to Zambia on Wednesday, 18 June 2025 using a private charter made available to the Family by well-wishers. Secondly, following the arrival and receipt of the body by Family members in Lusaka, full military honours will be conducted at the Kenneth Kaunda International Airport, after which the body shall be taken to the funeral house in Chifwema, where it will lie in state. Thirdly, that the body of the former president will be taken to Mulungushi International Conference Centre on Thursday 19th June, Friday 20th June and Saturday 21st June to enable members of the public to pay their last respects from 09:00 to 16:00, after which it shall be returned on all days to the funeral house in Chifwema to lie in state. In addition to avoid the confusion that has been ongoing relating to the Patriotic Front Party, the Honourable Given Lubinda will speak on behalf of the Patriotic Front Party.

[17] On 18 June 2025, and shortly before the body of the late President was due to be transported to the Lanseria Airport for repatriation, the Family informed that the body of the late President would not be arriving at Lanseria Airport, that the late President's body would remain at the mortuary and that the Family had decided that the late President would be buried in South Africa in a private funeral.

The issues to be decided

[18] The main issue to decide is whether an agreement was reached pertaining to the repatriation and burial of the former late President. Furthermore, whether Zambian law or South African law is applicable, affording whom a right to burial.

The Government's submissions

[19] On behalf of the Government it was argued that it accepted the Family's proposal that was recorded in annexure "FAA7". This was further confirmed in the press briefing, despite the Family now contending that the press statement was false because "no agreement that the remains would be repatriated" existed. Furthermore, in terms of the agreement a tentative programme was drawn up by the Family, and that programme reflected that the body of the late President would be repatriated to Zambia on a private charter plane on 18 June 2025 for purposes of a state funeral and burial on 22 June 2025. This agreement was confirmed during a joint briefing of the Government and the Family at the Rivonia Southern Sun hotel. It was argued that the Family clearly agreed to the terms as set out, but has breached the agreement.

[20] The Government contended that the domicile, habitual residence, and nationality of the late President and the Family are connecting factors that would point to Zambian Law as the proper *lex causae*. Reliance was placed on the matter of *Society of Lloyd's v Price; Society of Lloyd's v Lee* 2006 (5) SA 393 (SCA) wherein the SCA found that where there is a potential conflict between the two applicable systems of law, that “via media approach is the appropriate one in dealing with the kind of problem with which we are now confronted. Not only does it take cognisance of both the *lex fori* and the *lex causae* in characterising the relevant legal rules, but it also enables the court, after this characterisation has been made, to determine in a flexible and sensitive manner which legal system has the closest and most real connection with the dispute before it.”².

[21] Counsel for the Government further pointed out that in terms of Zambian law, public policy requires that the wishes of a late President or his/her Family yield before the requirement that deceased heads of state be afforded a state funeral and burial at Embassy Park. In selecting Zambian law as the *lex causae*, this Court ensures that the Zambian legal principles are harmonised and that the policies underlying the relevant legal rule are respected and upheld. Further, in this regard, the court was referred to the case of *The People v Secretary to the Cabinet Ex parte Kaweche Kaunda* (HP768 of 2021) [2021] ZMHC 6 (7 July 2021). The Zambian Court found that a state funeral is a public funeral ceremony, observing the strict rule of protocol, held to honour people of national significance. In addition to that, even if it was a personal wish of the late President not to be accorded a state funeral, such a wish must be overridden by the public interest. This decision, we find, is persuasive.

The Family's submissions

[22] The Family submitted that no agreement was reached. In the alternative, and if this Court found that an agreement was concluded, the Family elected to cancel the agreement based on what the Family alleged were material fraudulent misrepresentation, alternatively negligent misrepresentations, further alternatively innocent misrepresentations. The misrepresentations relates to the Family being adamant that the current President of Zambia was not to preside over the state funeral.

² Para [14]

[23] The Family also contended that, following the principle of *lex fori*, it dictated that South African courts would apply South African law to disputes arising within its jurisdiction, regardless of the nationality or domicile of the parties involved. As this is the country where the late President Lungu passed away, the *lex causae* in this instance should be the South African law.

[24] This Court was referred to some judgments emanating from this court, such as *Simakuhle v Simakuhle and Another (Simakuhle)* [2024] ZAGPPHC 33 at para [36] followed by Moshwana J in *P.N and Others v P.N* (104659/2022) [2024] ZAGPJHC 924 (18 September 2024) as authority for the proposed approach, wherein Phooko AJ stated:

“In my view, the First Respondent, as the wife to the deceased, has burial rights and may decide where her late husband should be buried.”

Reference was also made to *TM v CM and Another* [2019] ZAGPJHC 412 yet another unreported judgment by Adams J in which the learned Judge stated: "Weighing up several factors listed in the judgment, the learned judge found that the fairest order (on the facts of that case) was that the surviving spouse should be allowed to bury the deceased " in support of the Family's argument.

Reasons for decision

[25] It is well-established in our law that the correct judicial approach to the interpretation of written documents is that the inevitable point of departure is the language of the document itself. Words must be given their ordinary grammatical meaning, unless to do so would result in absurdity. A written agreement between the parties must be read as a whole to determine the true intention of the parties.³ If regard is had to the grammar and syntax of "FAA7", the purpose for which it was drawn up, considering that both parties were alive to the disputes between them, "FAA7" can only be interpreted as an agreement between the parties. The agreement entailing, first and foremost, repatriation to Zambia for burial purposes. Based upon the chronology of the common cause facts referring to the media briefing and the proposed programme drafted by the Family, fortifies this finding. There is thus no

³ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para [18]

factual dispute before this Court. The legal principle of *pacta sunt servanda* (agreements must be kept) also finds application.

[26] On the issue of whether Zambian or South African law is applicable, we took into account the decision of *Society of Lloyd's supra* one has to determine a flexible and sensitive manner in which the legal system has the closest and most real connection to this dispute. The domicile, habitual residence and nationality of the late President and the Family are connecting factors that would point to Zambian Law as the proper *lex causae*.

[27] As counsel for the Government pointed out, in terms of Zambian law, public policy requires that the wishes of a late President or his/her Family yield before the requirement that deceased heads of state be afforded a state funeral and burial at Embassy Park. In selecting Zambian law as the *lex causae*, this Court ensures that the Zambian legal principles are harmonised and that the policies underlying the relevant legal rule are respected and upheld. Further, in this regard, the court was referred to the case of *The People v Secretary to the Cabinet Ex parte Kaweche Kaunda* (HP768 of 2021) [2021] ZMHC 6 (7 July 2021). That court stated that a state funeral is a public funeral ceremony, observing the strict rule of protocol, held to honour people of national significance. In addition to that, even if it was a personal wish of the late President not to be accorded a state funeral, such a wish must be overridden by the public interest. This finding too caters for the order that follows below.

[28] The agreement leaves no room for doubting that the current President of Zambia would be involved in receiving foreign dignitaries as Head of State of the host country. Details as to who else was to speak, other than the leader of the opposition party that the deceased belonged to, are trivial. The late President Lungu, like any other President in established democracies around the world, deserves to be buried with the necessary dignity. This Court cannot bar a President of another country to attend a state funeral. Stripped of emotive language and political posturing in the papers, the order that follows is intended to achieve that purpose. It follows that the Family's counterapplication is unmeritorious and must be dismissed.

[29] As for the striking-out applications by both parties this Court did not take cognisance of any vexatious, irrelevant or scandalous averments by any of the parties

in coming to its decision. Neither party has suffered any prejudice and both applications are dismissed with no orders as to costs. Despite the lateness and the paucity of the reasons given for the condonation application for the late filing of the counter-application this Court considered the averred misrepresentations, but finds no substance in these allegations.

Costs

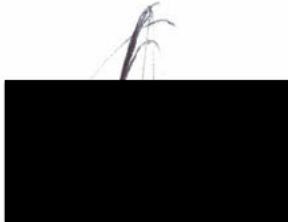
[30] The Court has a discretion when awarding costs and must exercise this discretion judicially. An order of costs must be made upon a consideration of the facts in this matter, and the decision thereon is made considering the fairness to both parties. In this matter it is only fair and just that no order as to costs should be made. The effect of this order is that each party is to pay its own costs.⁴

Order

- [31]
1. The intervention application is dismissed. No order as to costs.
 2. The applications to strike-out are dismissed. No order as to costs.
 3. The application for condonation and the counter-application are dismissed. No order as to costs.
 4. It is ordered that the applicant is entitled to repatriate the body of the Late President Edgar Lungu ("the late President Lungu") for a state funeral and burial thereafter in Embassy Park, Lusaka, Republic of Zambia.
 5. The Eighth Respondent is authorised and ordered upon service of the court order by the Sheriff of this Honourable Court, to immediately surrender the body of the Late President Lungu to a representative or representatives of the Zambia High Commission to enable the Applicant to repatriate the body to Zambia for the purposes stated in paragraph 4 above.

⁴ *DE v RH* 2015 (5) SA 83 (CC) at 105D-E.

6. The First to Seventh Respondents are authorised to be present when paragraphs 4 and 5 of this Order are executed, and an Aide De Camp, the late president's physician, and two Family members may accompany the coffin containing the body of the Late President Lungu during the repatriation
7. There is no order as to costs, which includes reserved costs.


A.P. LEDWABA
ACTING JUDGE-PRESIDENT OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA


T.P. MUDAU
ACTING DEPUTY JUDGE-PRESIDENT OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-096565

HEARD ON: 4 August 2025

FOR THE APPLICANT: ADV. B.C. STOOP SC
ADV. A. MARQUES

INSTRUCTED BY: VFV Attorneys

FOR THE 1st to 7th RESPONDENTS: ADV. C.J. WELGEMOED
ADV. M. ARROYO

INSTRUCTED BY: Mashele Attorneys Inc.

DATE OF JUDGMENT: 8 August 2025