

**IN THE SUPREME COURT OF MISSISSIPPI**  
**No. 2012-IA-00166-SCT**

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**AZIKIWE KAMBULE**  
Appellant-Defendant

v.

**JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI,**  
**EX REL. THE STATE OF MISSISSIPPI**  
Appellee-Plaintiff

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**BRIEF OF APPELLANT**  
**AZIKIWE KAMBULE**

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**APPEAL FROM THE CIRCUIT COURT OF**  
**HINDS COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT**  
**HONORABLE TOMMIE GREEN, CIRCUIT JUDGE**

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### **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court of Mississippi may evaluate possible disqualification or recusal.

1. Honorable Tomie T. Green, Circuit Judge for Hinds County, Mississippi, First Judicial District.
2. State of Mississippi, Appellee/Plaintiff.
3. Jim Hood, Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
4. Jim Hood, counsel for Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
5. Bridgette Wiggins, Special Assistant Attorney General, counsel for Attorney General for the State of Mississippi, ex rel. the State of Mississippi, Appellee/Plaintiff.
6. Mississippi Department of Corrections, Appellee/Defendant.
7. David K. Scott, Special Assistant Attorney General, counsel for Mississippi Department of Corrections, Appellee/Defendant.
8. Charles Hooker, Appellant/Defendant.
9. David Gatlin, Appellant/Defendant.
10. Nathan Kern, Appellant/Defendant.
11. Anthony McCray, Appellant/Defendant.
12. Thomas M. Fortner, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
13. Erik M. Lowrey, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
14. Richard A. Filce, ERIK M. LOWERY, P.A., counsel for Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray, Appellants/Defendants.
15. Kirby Tate, Appellant/Defendant.
16. Silvia S. Owen, counsel for Kirby Tate, Appellant/Defendant.
17. Katherine Robertson, Appellant/Defendant.
18. Luther T. Munford, PHELPS DUNBAR, LLP, counsel for Katherine Robertson, Appellant/Defendant.
19. Robert Gregg Mayer, PHELPS DUNBAR, LLP, counsel for Katherine Robertson, Appellant/Defendant.
20. John M. Colette, JOHN M. COLLETTE & ASSOCIATES, counsel for Katherine Robertson, Appellant/Defendant.

21. Charles W. Pickering, Sr., CHARLES W. PICKERING SR. LAW OFFICE, counsel for Katherine Robertson, Appellant/Defendant.
22. Azikiwe Kambule, Appellant/Defendant.
23. Joshua Howard, Appellant/Defendant.
24. Cynthia A. Stewart, CYNTHIA A. STEWART, P.A., counsel for Azikiwe Kambule and Joshua Howard Appellants/Defendants.
25. Aafram Sellers, counsel for Appellant/Defendant Joshua Howard.
26. Edward Blackmon Jr., BLACKMON & BLACKMON, PLLC, counsel for Azikiwe Kambule and Aaron Brown, Appellants/Defendants.
27. Emily Rebecca Hentz, Putative Intervenor.
28. Alison Oliver Kelly, counsel for Emily Rebecca Hentz, Putative Intervenor.
29. Former Governor Haley Barbour, Amicus Curiae.
30. Charles E. Griffin, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
31. E. Barney Robinson III, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
32. Benjamin M. Watson, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
33. Melissa Baltz, BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, counsel for Former Governor Haley Barbour, Amicus Curiae.
34. Phil Bryant, in his official capacity as Governor of the State of Mississippi.
35. Robert G. Waites, counsel for Phil Bryant, in his official capacity as Governor of the State of Mississippi.
36. Jack L. Wilson, counsel for Phil Bryant, in his official capacity as Governor of the State of Mississippi.

APPELLANT, AZIKIWE KAMBULE



Cynthia A. Stewart (MSB N [REDACTED])

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### **STATEMENT OF THE ISSUES**

1. Whether the trial court's assertion of subject matter jurisdiction comports with the textual dictates of the Mississippi Constitution. Including the separation of powers, which establish that the power to grant reprieves and pardons is vested exclusively in the Governor?
2. In the alternative, whether any insufficiency of publication under Section 124 would constitute harmless constitutional error for which no remedy would lie?
3. In the further alternative, whether the trial court erred in refusing to dismiss the matter for lack of standing and/or improper joinder under Rule 20 of the Mississippi Rules of Civil Procedure.
4. In the further alternative, whether the trial court erred in re-assigning this matter away from the Judge to whom it was originally randomly assigned.

## **STATEMENT OF THE CASE**

Appellant-Defendant, Azikiwe Kambule, joins in the Statement of the Case set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray. In Addition, he sets out the following specifics to his case.

### **A. Statement of the Facts**

Appellant-Defendant, Azikiwe Kambule, was a felon convicted under the laws of the State of Mississippi, housed at the Yazoo Regional Correctional Facility. Governor Haley Barbour formally pardoned Mr. Kambule on January 10, 2012. (R.E. 3)

Appellant-Defendant, Azikiwe Kambule applied for clemency on February 18, 2011, and duly and properly published his notice. (R. E. 1 and R. E. 3))

His notice was published four (4) times in the Madison County Herald on November 3, November 10, November 17 and November 24, 2011. (R. E. 2)

The Order Granting Motion for Temporary Restraining Order and Injunctive Relief filed January 11, 2012, does not name the Appellant-Defendant, Azikiwe Kambule It adds John Does 1-200. The Order authorizes the release of any person in Custody when the Department of Corrections provides the Attorney General and the Court with sufficient proof of publication requirements. Mr. Kambule has done so. He filed an Entry of Special Appearance and Motion to Dismiss. A proof of publication was attached to Mr. Kambule's Entry of Special Appearance and Motion to Dismiss and delivered to the office of Judge Green. It was also served on David Scott on behalf of the Department of Corrections and Mr. Hood.

## **SUMMARY OF THE ARGUMENT**

Appellant-Defendant, Azikiwe Kambule, joins in the Summary of the Argument set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray.

## **STANDARD OF REVIEW**

Appellant-Defendant, Azikiwe Kambule, joins in the Standard of Review set out

in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray.

#### **ARGUMENT**

Appellant-Defendant, Azikiwe Kambule, joins in the Argument set out in the Brief of appellants, Charles Hooker, David Gatlin, Nathan Kern and Anthony McCray.

#### **CONCLUSION**

This appeal implicates nothing less than the fundamental structure of our Constitutional Government. The separation of powers enshrined in the first two sections of our State Constitution precludes judicial review of the exclusive authority of the executive to grant clemency. Respect for that authority, as absolute, has been a consistent theme in every decision this Court has rendered in the history of the current Constitution. Attorney General Hood has asked that precedent be ignored and the State be allowed to pursue judicial review and judicial remedies not authorized by the text of the Constitution and never before permitted by a Court of this State.

The law contemplates only three general areas of review of a clemency order by the Governor. It is undisputed that the Governor signed the relevant pardons. It is undisputed that the pardons do not involve a conviction of impeachment. It is undisputed that the pardons do not involve a conviction for treason. Absent an allegation in one of those three categories, there is no judicial remedy. The available remedies are constitutional. Therefore, for all of the reason set forth herein. The Appellant-Defendant, Azikiwe Kambule, prays that the decision of the trial court be reversed and rendered, and the matter dismissed with prejudice at Appellee's cost.

This, the 7<sup>th</sup> day of February, 2012.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Cynthia A. Stewart, do hereby certify that she has this day delivered a copy of the foregoing instrument to the following, via First Class United States Mail, postage prepaid and e-mail:

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THIS, the 7<sup>th</sup> day of February, 2012.



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