IN THE COURT OF APPEAL FOR ZAMBIA **CAZ.08/178/2017**
HOLDEN AT NDOLA AND LUSAKA
(Civil Jurisdiction)

BETWEEN:

GEOFFREY LUNGWANGWA **APPLICANTS**
(On his own behalf and on behalf of 47 other Members of Parliament belonging to the United Party for National Development (UPND))

AND

THE ATTORNEY GENERAL **RESPONDENT**

Coram: Chisanga, JP, Mchenga, DJP, and Makungu, JA

On 2nd August, 2017 and 24th January, 2018

For the Applicants: K. Mweemba, Keith Mweemba Advocates with G. Phiri, PNP Advocates

For the Respondent: A. Mwansa SC, Solicitor General with C. Hara, Deputy Chief State Advocate, D.M. Chileshe, Senior State Advocate, C. Musonda and D. Kapumba, In-house counsel, National Assembly

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J U D G M E N T

Mchenga, DJP, delivered the Judgment of the court.

Cases referred to:

1. **Patience Chalwe Freedom Mwelwa v The Attorney General 2014/HP/0793**
2. **Nigel Kalonde Mutuna and Another v The Attorney General [2012] Z.R. Vol.3 565.**
3. **Judith Chilufya v The Attorney General Ministry of Works and Supply Appeal NO. 76 2006/SCZ No. 8/12/66**
4. **Inland Revenue Commissioners v National Federation of Self Employed and Small Business Limited [1982] A.C. 617**
5. **Kasai Mining and Exploration Limited v The Attorney General, Zamcargo Prospecting Limited and Equinox Minerals Limited SCZ Appeal No. 193, of 2006**

6. **The Attorney General v The Speaker of the National Assembly and Dr. Ludwig Sondashi SCZ Judgement No.6 of 2003**

7. **Zinka v The People [1990-1992] Z.R. 73**

8. **Sitali v Central Board of Health Appeal No. 178 of 1999.**

9. **Puma Energy Zambia Plc v Competition and Consumer Protection Commission SCZ Appeal No. 172 of 2015**

10. **Kachasu v The Attorney General [1967] Z.R. 145**

11. **Patel v The Attorney General [1968] Z.R. 99**

12. **The Attorney General v Law Association of Zambia [2008] ZR 21**

13. **The Attorney General v Mutuna and Others, Appeal No. 88 of 2012**

14. **Chitala v The Attorney General [1995-1997] Z.R. 91**

15. **Nyampala Safari (Z) Limited and Others vs Zawa and Others [2004] Z.R. 49**

16. **Regina vs Aston University Senate, Exparte Roffy and Daro 7LR [1969] 2 WLR 148**

17. **Mahon v Air New Zealand Ltd and Others [1984] 3 ALL ER 201**

18. **Council of Civil Servants Union v Minister for Civil Service [1983] UKHL 6**

Legislation referred to:

1. **National Assembly (Powers and Privileges) Act, Chapter 12 of the Laws of Zambia**

2. **The Constitution of Zambia, Chapter 1 of the laws of Zambia**

Works referred to:

1. **The Rules of Supreme Court, White Book, 1999 Edition**

2. **Standing Orders of the National Assembly, 2016**

This is a renewed application for leave to move for judicial review taken out pursuant to the provisions of **Order 53 rule 3** and **Order 53 rule 14 sub-rule 3 of the Rules of Supreme Court.**

The circumstances surrounding the application as revealed in the affidavits filed by both sides, are that on 17th March 2017, the applicants, who are United Party for National Development (UPND) members of parliament, boycotted the sitting of the National Assembly at which the President was delivering his state of the nation address. Following the boycott, some members of parliament, who included members of the Committee on Privileges, Absences and Support Services, lodged a complaint with the Speaker demanding that disciplinary action be taken against them.

On 21st March 2017, a UPND member of parliament raised his concerns on the partiality of the Committee on Privileges, Absences and Support Services. Addressing the Speaker, on the floor of the house, he wondered whether it was possible for the committee to impartially deal with the complaint against the UPND members of parliament when some of its members had participated in a caucus meeting that launched the complaint.

A few days later, on 23rd March 2017, the Clerk of the National Assembly wrote letters to the applicants charging them and inviting them to show cause why disciplinary action should not be taken against them for boycotting the President's speech. The applicants were also informed that in the event that they did not respond to the charges, the matter would still be determined without their input in accordance with the provisions of the **National Assembly (Powers and Privileges) Act.**

In response to the charges, counsel representing the applicants wrote to the Speaker on 18th April 2017. He indicated that since there was litigation in the High Court, dealing with matters similar to the issues raised in the letter charging his clients, they would not respond to the charges before the determination of that case. They also alleged that there was a conspiracy by political parties and independent members of parliament to punish their clients.

The Speaker proceeded to determine the complaint against the applicants and on 13th June 2017, following a resolution of the Assembly, suspended them from the house for a period of 30 days. He also directed that during the period of their suspension, the applicants would not be allowed to access the parliament building, the parliament motel and take part in deliberations of any of the committees of parliament. In addition, they would not receive any allowances or salaries.

Aggrieved by the Speaker's decision, the applicants applied for leave to move the High Court for judicial review. The grounds on which the court was moved were that the Speaker's decision was illegal, procedurally irregular/unfair and unreasonable/irrational. After hearing both parties, the Judge, in the court below, found that there was no basis for further enquiry into the Speaker's conduct and dismissed their application.

According to the statement in support of the application for leave, the reliefs the applicants seek are:

(i) **A declaration that the decisions of the Speaker of the National Assembly contained in the ruling of 13th June 2017, to suspend forty-eight (48) Members of Parliament from the House is illegal as he is not reposed with powers to do so, and/or in the alternative,**

did not follow the laid down procedure in the law when effecting the said suspensions;

(ii) **An order of certiorari to remove into the High Court for the purpose of quashing the said decision of the Speaker of the National Assembly to suspend the forty-eight (48) members of Parliament; barring them from accessing Parliament buildings, National Assembly Motel and from accessing salaries and allowances;**

At the hearing, both parties complemented the written submissions they had filed in earlier on with oral submissions.

On behalf of the applicants, Mr. Mweemba and Mr. Phiri, referred to **Order 53 rule 3 of Rules of the Supreme Court** and cases, including, **Patience Chalwe Freedom Mwelwa v The Attorney General**[1], **Nigel Kalonde Mutuna and Another v The Attorney General**[2] and **Judith Chilufya v The Attorney General and Ministry of Works and Supply**[3] and submitted that this being an application for leave to move the court for judicial review, the applicants are only required to demonstrate that they have an arguable case fit for further investigation.

They also referred to **Inland Revenue Commissioner v National Federation of Self Employed and Small Business Limited**[4], **Kasai Mining and Exploration Limited v The Attorney General, Zamcargo Prospecting Limited and Equinox Minerals Limited**[5] and other cases, and submitted that when deciding whether a *prima facie* case warranting further investigation has been made out, it is competent for the court to wholly rely on the evidence that has been placed before it in the affidavit in support of the application.

In support of the proposition that the Speaker's decision was illegal, counsel submitted that since the applicants were charged with absenteeism and not contempt, the Speaker's decision to find them guilty of contempt, was not supported by the law. In addition, it was in breach of the rules of natural justice because the applicants were found guilty of a charge on which they were not heard. They also submitted that the applicants were unable to respond to the charge of absenteeism because they were the subject of proceedings pending before the High Court.

Counsel also submitted that when the applicants boycotted parliament, they were exercising their freedom of expression. He argued that the right to boycott the sitting of parliament in the exercise of the freedom of expression is a matter that must be inquired into by the court.

As regards the claim that the Speaker's decision was tainted with procedural irregularity/unfairness, counsel submitted that where there is an allegation of contempt under **Section 28 of the National Assembly (Powers and Privileges) Act**, the power to take disciplinary action is reposed in the Committee on Privileges, Absences and Support Services or a select committee. In this case, the Speaker acted in breach of **section 28 (1) of the National Assembly (Powers and Privileges) Act,** when he suspended them without referring their case to any committee.

In support of the proposition that the Speaker's decision was unreasonable or irrational, counsel submitted that the decision is unreasonable and irrational as it goes against the spirit of **Article 8 of the Constitution,** which promotes human dignity, equity, social justice, equality and non-discrimination. They submitted that the powers of the

National Assembly under **section 28 the National Assembly (Powers and Privileges) Act** must be considered as against **Article 20 of the Constitution,** dealing with the freedom of expression. They also submitted that it was unreasonable to suspend the applicants for 30 days for being absent on only one day.

They referred to the case of **The Attorney-General v The Speaker of The National Assembly and Dr. Ludwig Sondashi**[6] and submitted that through judicial review, we have the jurisdiction to competently determine the constitutionality of any provision of the law at play in this case. This is the case even if **Article 28 of the Constitution** provides that an appeal from the decision of the High Court, on a matter concerning the bill of rights, shall lie to the Supreme Court, because this application is not an appeal but a renewal of an application for leave.

Counsel concluded by referring us to **Order 53 rule 14 sub-rule 19 of the Rules of the Supreme Court** and inviting us to consider the option of reviewing the Speaker's decision should we grant the applicants leave to move the court for judicial review.

In response, the Solicitor General, indicated that since this is a renewed application for leave to move the court for judicial review, we have the jurisdiction to deal with all the issues, including those of a constitutional nature that were raised before the High Court in the initial application for leave.

Coming to the submission that the Speaker's decision to suspend the applicants for contempt is illegal because they were only charged with absenteeism, the Solicitor General pointed out that in his letters dated 23rd March 2017, the Speaker indicated that if the applicants did not respond to the charges, they would be dealt with in

accordance with the **National Assembly (Powers and Privileges) Act. Section 28 National Assembly (Powers and Privileges) Act,** allows the Speaker to deal with contemptuous conduct that may not be covered by **Section 19 National Assembly (Powers and Privileges) Act.** He also referred to **Zinka v The People**[7] and submitted that even though the Speaker did not refer to any provision in the Act when he charged the applicants, his action cannot be said to be illegal because under the Act, he has the power to take such action.

He also referred to **Sitali v Central Board of Health**[8] and submitted that having been given the opportunity to be heard, but having decided not to respond to the charges they were facing, the applicants cannot now claim that they were not heard on the charges on which they were suspended.

Responding to the argument that the Speaker's decision was tainted with procedural impropriety because he acted unilaterally without referring the matter to a committee, the Solicitor General submitted that following the complaint by a UPND member of parliament and counsel representing the applicants on the partiality of the Committee on Privileges, Absences and Support Services and other members of parliament, the Speaker was entitled to personally deal with the matter. He then referred to **Puma Energy Zambia Plc v Competition and Consumer Protection Commission**[9] and submitted that the use of the word "may" in **section 28(1) of the National Assembly (Powers and Privileges) Act,** implies that when a case of contempt arises, the Speaker can either deal with the matter or refer it to the Committee on Privileges, Absences and Support Services or a select committee.

The Solicitor General's response to the submission that the Speaker's decision to suspend the applicants for 30 days was draconian and unreasonable because it breached the spirit of **Article 8 of the Constitution,** was that the normative values and principles set out in that article are not justiciable. He then referred to **Section 28 (3) of the National Assembly (Powers and Privileges) Act** and submitted that following their suspension, the Speaker was allowed to exclude the applicants from the precincts and activities of parliament.

The Solicitor General also submitted that it is recognised that the applicants have the right to boycott the proceedings of parliament but the right is not absolute and it can be curtailed when it is found to lower the dignity, decorum and integrity of the house. He argued that the sitting the applicants boycotted was solemn and a formal occasion that must be attended by all members of parliament. He referred to **Article 20 (3)(c) of the Constitution** and the cases of **Kachasu v The Attorney General**[10] and **Patel v The Attorney General**[11] and submitted that since the freedom of expression is not absolute, it cannot be said that the Speaker's decision to exclude the applicants was unreasonable.

In conclusion, the Solicitor General brought to our attention the fact that the applicants have since served their punishment. On the authority of the **Attorney General v Law Association of Zambia**[12], he submitted that it would be inappropriate for us to grant them leave in this case as the subsequent proceedings would be an academic exercise. Finally, he referred to **Attorney General v Mutuna and Others**[13] and **Chitala v Attorney General**[14] and submitted that since the applicants have failed to

demonstrate that they have a meritorious case warranting further investigation, leave to proceed to a substantive hearing must not be granted.

In reply, counsel for the applicants maintained that at this stage of the proceedings, the court can only consider whether the applicants have made out a *prima facie* case. They submitted that **The Attorney General v Mutuna and Others**[13], was not applicable to this matter because it was concerned with the discharge of leave that had already been granted while we are dealing with an application for leave.

In response to the Solicitor General's submission that **clause 3 of Article 20 of the Constitution** allows for derogations to the freedom of expression, counsel submitted that the same provision was referred to in the case of **The Attorney General v The Speaker of the National Assembly and Dr. Ludwig Sondashi**[6], to justify the suspension of a member of parliament and it was found not to be applicable.

On the application being academic, counsel submitted that the only relief that can be said to be academic is the request to stay the Speaker's decision. They state that the hearing will not be academic because if successful, the applicants will be entitled to the emoluments that were forfeited.

In response to the submission that the applicants were given the opportunity but failed to respond to the charge letters, counsel submitted that they were entitled to object to responding to the letters as they had, pending before court, a matter challenging censure of members of parliament for a previous boycott. Even if it was not the same boycott, the issues were the same. They maintained that the applicants were denied the right to be heard because they were charged with absenteeism but found guilty

of contempt. Reference was made to **clause 151 (1) of the Standing Orders,** and it was submitted that the clause specifies the manner in which a member of parliament, who is accused of absenteeism, should be dealt with.

We have considered the evidence on record and the oral and written submissions by counsel. From the submissions, it is apparent that the extent to which we can delve into the evidence before us as we consider this application is an issue; **The Attorney General v Mutuna and Others**[13], was extensively referred to. That case was concerned with an appeal against the High Court's decision not to grant an application, made pursuant to **Order 53 rule 14 sub-rule 4 of the Rules of the Supreme Court,** to discharge leave to move for judicial review. The Supreme Court held that when an application to discharge leave is made, the court is in effect being invited to examine substantive matters to decide whether or not the matter should proceed to the main enquiry. Clearly, even then, the court is not to determine the substantive matter, but merely examine whether a *prima facie* case has been made out warranting further investigation. We are here concerned with whether a *prima facie* case has been made out to warrant further inquiry.

Before we deal with the main issues that this application has raised, we will address the Solicitor General's submission that since the applicants have already served their suspension, granting them leave in this matter is likely to lead to a hearing that is academic. One of the reliefs the applicants seek is:

> **"An order of certiorari to remove into the High Court for the purpose of quashing the said decision of the Speaker of the National Assembly to suspend the forty-eight (48) members of Parliament; barring them from accessing Parliament buildings, National Assembly Motel and from accessing salaries and allowances"**

Our view is that proceedings for judicial review in this case, cannot be rendered academic merely because the applicants have served their suspensions. This is because in the event a *prima facie* case in favour of the applicants were made out, and the applicants' substantive application for judicial review granted, they would be awarded relief. It is therefore misplaced to argue that the application is academic.

As earlier indicated, the Speaker's decision to suspend the applicants has been challenged on grounds that it is illegal, procedurally irregular and unreasonable or irrational. The arguments that have been advanced in support of or against the proposition that the Speaker's decision was both illegal and procedurally irregular, are the same. This being the case, we shall deal with the two issues at the same time.

The purpose of judicial review has been echoed in many decisions over time. We consider it necessary to advert to that purpose, as it is clear that both parties seem to have overlooked the purpose of judicial review in their arguments before us. In **Nyampala Safari (Z) Limited and Others vs Zawa and Others**[15] it was stated that judicial review is not a process by which the merits of a decision made by a body exercising public functions are examined. On the contrary, the application is one through which the decision making process of such a body is examined as to whether the affected individual has been fairly treated by the body or authority in question. It is a review of the manner in which the decision was made. Thus, a court, cannot substitute its own opinion in the place of the authority concerned, as though it sat in appeal over that authority's decision. It cannot pronounce itself on whether the decision in question was good or bad, as such questions relate to the merits of a decision. Judicial review is

instead directed at determining whether the decision was reached in a proper manner, and was within the range of permissible outcomes in law.

Illegality as a ground of judicial review arises where the concerned authority performs an act which is not authorized by the governing legislation. This is referred to as substantive *ultra vires*. A mistake of law in construing the governing legislation renders the decision *ultra vires*. A court called upon to grant leave to move for judicial review will as rightly argued on behalf of the applicants, rely on the material placed before it. It will then form a view on that material. If it is of the opinion that a *prima facie* case in favour of the applicant has been made out, it will grant leave to move for judicial review. That is the remit of our jurisdiction in this application.

We should state that necessarily, the court is called upon to view the facts, and the legislation in question, not in depth, but not perfunctorily either. A view should be formed on the material, and that view should reveal an arguable case. Thus, in considering both grounds as indicated above, we will examine the law that governed the Speaker's actions, and whether an arguable case is disclosed that he misdirected himself in proceeding as he did.

In **Regina vs Aston University Senate, Exparte Roffy and Daro**[16] a case involving university students in which the principles of *audi alteram partem* and natural justice were discussed, Donaldson J made this statement at page 1431:

> **"...in such circumstances, and with so much at stake, common fairness to the students, which is all that natural justice is, and the desire of the examiners to exercise their discretion upon the most solid basis, alike demanded that before a final decision was reached, the students should be given an opportunity to be heard orally or in writing, in**

person or by their representatives as might be most appropriate. It was in my judgment, the examiners' duty and the students' right that such audience be given. It was not given and there was a breach of the rules of natural justice."

In **Mahon v Air New Zealand Ltd and Others[17], at 210**, Lord Diplock, commenting on the rules of natural justice, as they relate to the right to be heard, observed as follows:

"The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made.

.....

.....

The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had been placed before the decision maker, might have deterred him from making the finding even though it cannot be predicted that it would inevitably have had that result."

In this case, the charge letters dated 23rd March 2017, set out the infractions the applicants are alleged to have committed. Specific reference is made to their absence during the President's state of the nation address and that it appeared to be a boycott. Further, the applicants were informed that in the event that they did not respond to the charges leveled against them, the matter would be dealt with in accordance with the provisions of **The National Assembly (Powers and Privileges) Act.**

In his letter dated 28th March 2017, counsel for the applicants indicated that his clients would not respond to the charge letters as doing so would be *sub judice*. This was because there was a matter in court dealing with issues that had been raised in those

letters. We fail to understand how responding to the charge letters would have been *sub judice* as the case in court was dealing with a previous boycott and not the boycott that was under enquiry.

In the circumstances, it cannot be said that the applicants were denied the right to be heard because they were given the opportunity to respond to specified misconduct but opted not to do so. For the same reasons, it cannot be claimed that they were suspended on a charge on which they were not heard. The charge letters invited them to respond to the allegation that they were absent during the President's speech because they were part of a boycott, conduct which was subsequently found to be contemptuous.

In arguing that the Speaker failed to comply with the procedure, **sections 19 and 28 of the National Assembly (Powers and Privileges) Act** and **Clause 15 of the Standing Orders of the National Assembly** were referred to. **Section 19** of **The National Assembly (Powers and Privileges) Act** sets out offences associated with sittings at parliament and it provides as follows:

> **Any person shall be guilty of an offence who:**
>
> **(a) Having been called upon to give evidence before the Assembly or an authorised committee thereof refuses to be sworn or make an affirmation or**
>
> **(b) Being a witness misconducts himself;**
>
> **(c) Causes an obstruction or disturbance within the precincts of the Assembly Chamber during a sitting of the Assembly or of a Committee thereof; or**
>
> **(d) Shows disrespect in speech or manner towards the Speaker; or**
>
> **(e) Commits any other Act of intentional disrespect or with reference to the proceeding of the Assembly or of a committee of the Assembly or to any person presiding over such proceedings.**

Section 28 of The National Assembly (Powers and Privileges) Act, reads:

(1) Where a member is found to have committed a contempt of the Assembly whether specified in section nineteen or otherwise, the Speaker, the committee on Privileges or a selected committee appointed under Section (6) may impose anyone or more of the following penalties.

(a) A final warning;
(b) Admonition;
(c) A reprimand; and
(d) An order directing a member to apologise to the Assembly.

(2) Where a member is found to have committed contempt of the Assembly of a serious nature and none of the other penalties are sufficient for the contempt committed by the member, the speaker shall, on resolution of the Assembly, suspend the member from the Assembly for a period not exceeding thirty days.

(3) A member who is suspended from the Assembly shall, during the period of suspension for the purposes of this Act-

(a) not enter the precincts of the Assembly;
(b) not be paid the salary or allowance the member is entitled to for the member's service as a member.

(4) If a person, not being a member, is found to have committed contempt, whether specified in Section nineteen or otherwise, the Speaker shall order the person to appear before the Assembly and the speaker shall, upon attendance, admonish or reprimand the person at the bar of the Assembly.

(5) The Speaker may refer a case if breach of privilege or contempt of Assembly to the committee on privileges to examine the case and make appropriate recommendations to the Assembly.

(6) Where the alleged breach of privilege or contempt of the Assembly is committed by members of the committee of privileges, the Speaker shall appoint or select a committee to examine the matter and report accordingly to the Assembly.

Coming to **clause 151 of the Standing Orders of the National Assembly,** it provides as follows:

(1) There is hereby established the Committee on Privileges, Absences and Support Services comprising the Frist Deputy Speaker and nine other members appointed by the Standing Orders Committee.

(2) The First Deputy Speaker shall be the chairperson. The committee shall elect a vice chairperson at its first meeting.

(3) The Committee shall examine every case where a member has been absent from a sitting of the House or any committee without permission of the Speaker, or the Chief Whip and report whether the absence should be condoned or circumstances of the case justify that the House should, by resolution, either direct the Speaker to reprimand such member or suspend him or her from the services of the National Assembly for such a period as it may determine.

(4) Whenever a member is absent from a sitting of the House or a committee without obtaining permission, a letter shall be written to the member by the Speaker ordering the member to appear before the Committee.

(5) The Committee shall consider all matters connected with the comfort and convenience of members around and within the precincts of Parliament.

(6) The Committee shall advise the Speaker on matters connected with the policy and administration of the Library, Members' Motel, and Parliament Radio and Television.

(7) The Committee shall consider all matters relating to the privileges of the Members.

The applicable provision, **section 28 of The National Assembly (Powers and Privileges) Act**, clearly indicates that where a member is found to be in contempt, he can either be dealt with by the Speaker, the Committee on Privileges, Absences and Support Services or a select committee. Similarly, subsection 5 of that provision is to the effect that where there is a breach of privilege or contempt of the Assembly, the Speaker may refer the case to the Committee on Privileges, Absences and Support Services.

Section 28 of the Act refers to conduct outlined in section 19 as contempt of the Assembly. This includes committing an act of intentional disrespect to a person presiding over the proceedings. The ruling on the boycott of the official opening of the first session of the National Assembly by His Excellency the President on 20th September 2016, indicated that the boycott showed disrespect to the President, and also demeaned the dignity and decorum of the House. The members of Parliament who had boycotted were ordered to apologise to the House for their undesirable,

disrespectful and contemptuous conduct. They were also warned that in future, repetition of such conduct would be met with much stiffer penalty.

Clearly therefore, the boycott was regarded as a contempt. Section 28 of the Act confers power on the Speaker and the stated committees to deal with contempts of the Assembly in addition to those stated. Any other act of intentional disrespect with reference to the proceedings of the Assembly or to a person presiding at such proceedings is infraction punishable under section 28 of the Act in question. Therefore, considering the boycott, which is absence from the house, as a contempt, cannot be said to give rise to an arguable case that the speaker over stepped the limits of his power. Moreover, it is the Assembly itself that passes the resolution that erring members be suspended, where the contempt committed is serious, and not the Speaker. Section 28(2) leaves no doubt in that regard. We fail to see an arguable case that the applicants were charged for absenteeism, but punished for contempt, without being heard because the record reveals that they refused to be heard, when invited to do so through the charge letters.

The Solicitor General's argument that the Speaker has the option of either dealing with contemptuous conduct himself or referring it to a committee is sustainable, in light of the law cited above.

Coming to the question whether the Speaker's decision was irrational, reference was made to the 30 days duration of the suspension and **Article 8 of the Constitution**. In **Council of Civil Servants Union v Minister for Civil Service**[18], Lord Diplock described "irrationality" in the following terms:

> **"By 'irrationality I mean what can now be succinctly referred to as 'Wednesbury unreasonableness' ..... It applied to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...."**

The question then is, can the Speaker's decision to suspend the applicants for 30 days be said to be so outrageous for being defiant of logic or accepted moral standards that no sensible person would have arrived at it? We do not think so because **Section 28(2) of The National Assembly (Powers and Privileges) Act,** does provide that the Speaker may suspend a member of parliament for contempt, for a period of up to 30 days. It follows, that the Speaker's decision, in that regard does not give rise to an arguable case that it was irrational in the Wednesbury sense.

It was also submitted that the Speaker's decision was irrational as it was against the spirit of **Article 8 of the Constitution** as the parliamentarians were exercising their freedom of expression. **The Attorney General v The Speaker of the National Assembly and Dr. Ludwig Sondashi[6],** was referred to as authority for the proposition that the applicants' conduct was acceptable as it was in exercise of their freedom of expression. We find that circumstances of that case can be distinguished from what was prevailing in the matter at hand. In that case, Dr. Sondashi was censured for utterances he made to the press and the utterances had nothing to do with parliamentary proceedings. In this case, the applicants' conduct concerned proceedings at parliament which they boycotted.

Further, **Article 8 of the Constitution**, which the applicants say was breached, sets out the national values and principles and it provides as follows:

The national values and principles are-

(a) morality and ethics;
(b) patriotism and national unity;
(c) democracy and constitutionalism;
(d) good governance and integrity; and
(e) sustainable development.

The application of these national values and principles is set out in **Article 9 of the Constitution** which reads:

(1) the national values and principles shall apply to the-
(a) interpretation of the Constitution
(b) enactment and interpretation of the law; and
(c) development and implementation of State Policy
(2) .....

Going by **Article 9 of the Constitution**, it is clear that the Solicitor General was on firm ground when he submitted that they are not justiciable. They only set the background against which the Constitution and legislation is to be interpreted. It is not sufficient to simply claim that **Article 9 of the Constitution** was breached because the decision was immoral. In any case, this being Judicial review, we are concerned with the procedure adopted and not the merits of the decision.

The quest to develop jurisprudence on parliamentary boycotts and constitutionalism through these proceedings is clearly misplaced. Whether or not the applicants were exercising their freedom of expression goes to the merits of the Speaker's decision and is outside the province of judicial review.

All in all, we find that the applicants have not established a *prima facie* case that the Speaker's decision was either, illegal, in breach of procedure or irrational to warrant further investigation. We find no merit in the application and dismiss it with costs.

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F. M. CHISANGA
JUDGE PRESIDENT

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C.F.R. MCHENGA
DEPUTY JUDGE PRESIDENT

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C. K. MAKUNGU
COURT OF APPEAL JUDGE