

IN THE CONSTITUTIONAL COURT FOR ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

2025/CCZ/009

IN THE MATTER OF: ARTICLE 128 OF THE CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLE 1 (2), 8, 9,
61, 90, 91 and 79 OF THE CONSTITUTION OF ZAMBIA
(AMENDMENT) ACT NO. 2 OF 2016

IN THE MATTER OF: THE JURISDICTION OF THE CONSTITUTIONAL COURT
TO HEAR A MATTER THAT ALLEGES THAT A
PROPOSED LAW CONTRAVENES THE CONSTITUTION

IN THE MATTER OF: ARTICLES 1 (2), 8, 9, 61, 90, 91 AND 79 OF THE
CONSTITUTION (AMENDMENT) ACT NO 2 OF 2016

IN THE MATTER OF: THE PER INCURIAM DECISION OF THE COURT DATED
30TH JULY, 2020

BETWEEN:

MUNIR ZULU

CELESTINE MUKANDILA

AND

THE ATTORNEY GENERAL

**NELLY MUTTI (SUED IN HER CAPACITY AS
SPEAKER OF THE NATIONAL ASSEMBLY)**

**PRINCESS KASUNE (SUED IN HER CAPACITY AS
MINISTER OF JUSTICE)**



1st PETITIONER

2ND PETITIONER

RESPONDENT

1ST ALLEGED CONTEMNOR

2ND ALLEGED CONTEMNOR

Before Lady Justice J.Z Mulongoti In Chambers
On the 5th day of December, 2025

For the Petitioners: Mr. S. F Chipompela and Mr. C Mwenge of Messrs
Joseph Chirwa and Company

For the Respondent and the Alleged Contemnors: Ms. C. Mulenga Ag Chief State
Advocate, C. Mulonda Deputy Chief State Advocate and
N. Mwiya Principal State Advocate of Attorney General's

RULING

Cases referred to:

1. Prince Jefri Bolkiah v K.P.M.G (A Firm) [1999] All ER 517
2. RE: A firm of Solicitors [1997] CH 1
3. Hilton v Barker Booth and Eastwood [2005] UKHL 8
4. Lewanika and others v Chiluba and others [1998] ZR 79
5. Rakusen v Ellis, Munday and Clarke [1912] 1 Ch 831 at 837-8339, [1911-13] All ER 816-817
6. Supasave Retail Ltd v Coward Chance (a firm) and others; David Lee & Co (Lincoln) Ltd v Coward Chance (a firm) and others [1991] 1 All ER 668 at 672
7. Occupational Health and Safety Institute v James Mataliro SCZ Appeal No.12 of 2025

Legislation and works referred to:

The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

The Legal Practitioners Practice Rules, 2002

The Rules of the Supreme Court (White Book), 1999 edition

[1] The Ruling pertains to an application by the Attorney General (the respondent herein) to raise a preliminary objection to the competence of the advocates representing the petitioners. The application seeks an order to:

- i. Declare that Messrs Joseph Chirwa & Company are conflicted within the meaning of Rule 33 (1) (f) and (g) of the Legal Practitioners' Practice Rules, 2002; and

ii. Direct that the firm cease to act for the petitioners in these proceedings.

[2] The application was made by the respondent on behalf of the Speaker of the National Assembly who has been cited as the first alleged contemnor in an application for leave to commence contempt and committal proceedings filed by the petitioners and is pending hearing before the full bench of the Court.

[3] A brief background leading to this application is that on the 27th of June, 2025, a full bench of the Court passed Judgment in the matter herein, upholding the Petition on grounds that the decision by the respondent to initiate a Constitution amendment process before undertaking wide consultations with the people goes against the spirit of the Constitution in Articles 1, 2, 5 and 7 among others. We ordered the respondent to comply with the spirit of the Constitution by ensuring a people driven process led by an independent body of experts in conducting wide consultations with the people.

[4] On 1st October, 2025, the petitioners filed a summons for leave to commence contempt and committal proceedings citing the Speaker of the National Assembly and the Minister of Justice as the first and second alleged contemnors, pursuant to Order 52 rules 1 and 2 of the

Rules of the Supreme Court (RSC) 1999 edition. The summons is supported by an affidavit sworn by the second petitioner in which it is alleged that the first and second alleged contemnors have disregarded the judgment of the Court and are determined to proceed with the constitutional amendment process through Bill No. 7 of 2025 which is against the spirit of the Constitution. That after judgment the alleged contemnors were expected to withdraw Bill No.7 but the first alleged contemnor merely postponed it to a later date.

- [5] On 6th October, 2025, I issued the order of directions for the parties and alleged contemnors to file their respective responses and for the application to be set down for hearing before the full bench.
- [6] Before the application for leave could be set down for hearing, the respondent filed summons to raise a preliminary objection to the competence of the advocates representing the petitioners pursuant to Rule 33(1) (f) and (g) of the Legal Practitioners' Practice Rules, 2002, subject of this Ruling.
- [7] The summons was supported by an affidavit sworn by Loveness M. Mayaka, the acting Clerk of the National Assembly. The essence of the affidavit is that on 7th October, 2025 the respondent received a

letter of service exhibit LMM1, from Messrs Joseph Chirwa & Company (referred to as the Firm herein).

- [8] That a scrutiny of the said letter revealed that Mr. Lovemore Cheelo Kabwata, (Mr. Kabwata), who is employed as a committee clerk at the National Assembly of Zambia, is listed as one of the advocates of the Firm. This raises a real or seemingly perceived conflict of interest as the Speaker, the first alleged contemnor, is the head of the National Assembly where Mr Kabwata is employed. Therefore, the Firm ought not to represent the petitioners in these proceedings.
- [10] The respondent equally filed a list of authorities and skeleton arguments in support of the application to raise preliminary objection which they augmented orally during the hearing.
- [11] The gist is that Rule 33 (1) (f) and (g) prohibits a practitioner or firm from acting in circumstances that give rise to either an actual or perceived conflict of interest. That this is in order to safeguard both the independence of the legal practitioners and the public confidence in the legal profession by ensuring that practitioners serve their clients with undivided loyalty.
- [12] The cases of **Prince Jefri Bolkiah v K. P. M. G. (A Firm)**⁽¹⁾, **RE: A Firm of Solicitors**⁽²⁾ and **Hilton v Barker Booth and Eastwood**⁽³⁾ were relied on in

support of the argument that a legal practitioner cannot act at the same time both for and against the same client and his firm is in a similar position. The respondent maintained that this creates a conflict of interest which empowers the Court to invoke its inherent supervisory jurisdiction to ensure that advocates appearing before it conduct themselves with the requisite independence and propriety.

[13] That the situation *in casu* is not merely theoretical or perceived but is actual and immediate given that Mr. Kabwata's duties within the National Assembly expose him to information that, if known by the Firm, could advantage its clients or compromise the confidentiality of the National Assembly's internal affairs. That the respondent have discharged the burden of proof of actual or potential conflict of interest by demonstrating that Mr. Kabwata's name is listed on the Firm's letterhead as an advocate. Consequently, the Firm stands professionally embarrassed within the meaning of Rule 33(1) (f) and (g) of the Legal Practitioners' Rules, 2002.

[14] That there is no evidence to support the averments by the Firm that Mr. Kabwata ceased to be associated with the Firm before the application in issue was filed into court on 7th November, 2025. And the fact that Mr. Kabwata requested the firm to remove his name also demonstrates that he understood that he was conflicted.

- [15] Citing High Court decisions and the Supreme Court in the case of **Lewanika and others v Chiluba and others⁽⁴⁾** which holds that :
‘any advocate whatsoever must decline to accept instructions when there are circumstances which would render it difficult for him/her to maintain the requisite professional independence or which would in some way impair or undermine the advocate’s ability to promote the best interests of the administration of justice. Ideally, an advocate should not appear as such in his own cause as in any other situation of possible want of independence or conflict of interests or embarrassment generally.’
- [16] It was argued that the court must act to preserve the purity of the judicial process by disqualifying the firm’s representation. That this is not punitive but serves the ends of justice, ensures the appearance of fairness and maintains public confidence in the profession.
- [17] The petitioners opposed the application and filed an affidavit in opposition, a list of authorities and skeleton arguments. The affidavit in opposition is sworn by Christopher Mwenge, counsel seized with conduct of the matter. The gist of the affidavit is that: Mr. Kabwata was a consultant in the Firm up until the implementation of the Legal Practitioners Guidance Note No.1 of 2025 issued on 1st October 2025.

[18] Further, that a conflict of interest does not arise because Mr. Kabwata is employed as a committee clerk and not legal officer which position he held up to 21st January, 2025. The first alleged contemnor has in fact relied on Mr. Kabwata to handle her matters against the respondent and only raised the issue of conflict after being cited for contempt of court. And no evidence of misconduct has been adduced against Mr. Kabwata to warrant a finding of conflict of interest.

[19] In the skeleton arguments, the petitioners argued that the respondent had failed to prove the elements of conflict of interest stated in Rule 33 (1) (f) and (g). The elements according to the petitioners are : (a) A practitioner has accepted a brief; (b) the brief would create a conflict of interest or significant risk of some conflict to the practitioner, his partner or association (c) that there is a risk of a breach of confidence, and the legal practitioner possesses information which may advantage the new client over the former. The respondent having failed to prove these elements, there is no actionable conflict of interest that would warrant the recusal of the Firm from these proceedings.

[20] Additionally, that Mr. Kabwata is not a representative or employee of the first alleged contemnor in her capacity as Speaker but he is an employee of the National Assembly at large and it has never been a

party to these proceedings. Therefore, it cannot be said that Mr. Kabwata accepted a brief from his employer. Additionally, his employment as committee clerk prevents him from being in a position to obtain confidential information and rendering legal advice pertaining to these proceedings.

[21] I have considered the affidavit evidence of both parties and their competing arguments. The respondent filed an application to raise a preliminary objection seeking to have the Firm removed from these proceedings as the petitioners' counsel due to an alleged conflict of interest which, according to the respondent has arisen because one of the advocates listed as such at the Firm is also an employee of the National Assembly which is headed by the first alleged contemnor. The application is anchored on Rule 33 (1) (f) and (g) of the Legal Practitioners Practice Rules, 2002.

[22] The backdrop leading to the application is that on 27th June, 2025 the full bench of the Court passed judgment in the main matter between the petitioners and the respondent. It is alleged by the petitioners that the alleged contemnors disregarded the judgment of the Court and are determined to proceed with the constitutional amendment process contrary to the holding of this Court. That the second alleged contemnor has failed to set up a committee of experts while the first

alleged contemnor had postponed Bill No.7 to a later date instead of withdrawing it, giving rise to the petitioners' application for contempt and committal proceedings against her and the second alleged contemnor. This then led to the current application for removal of the Firm as alluded to.

[23] It is clear therefore, that the alleged contemnors were not party to the matter between the petitioners and the respondent. I must hasten to state that contempt proceedings are criminal in nature and unrelated to the main matter which *in casu* has been determined on the merits. With that said, the cardinal issue the current application raises, is, whether the respondent has sufficiently established a conflict of interest on the part of the Firm to warrant its removal or recusal from the proceedings as the petitioners' counsel for offending Rule 33 (1) (f) and (g) of the Legal Practitioners Practice Rules.

[24] Rule 33 (1) (f) and (g) is couched thus:

33. (1) A practitioner shall not accept any brief if to do so would cause the practitioner to be professionally embarrassed under the following circumstances:

(f) there is or appears to be some conflict or significant risk of some conflict either between the interest of the practitioner, or any partner

or other associate of the practitioner and some other person or between the interest of any one or more of their client; or

(g) the matter is one in which there is a risk of a breach of confidence entrusted to the practitioner, or to any partner or other associate, by another client or where the knowledge which the practitioner possess of the affairs of another client would give an undue advantage to the new client.

[25] My perusal of the above rule is that it clearly prohibits a practitioner from accepting a brief or instructions where it appears that there is a potential conflict of interest or potential breach of confidence on the part of the practitioner, his partner or associate. On the facts before me, the question is, should the Firm be removed or recused from the proceedings because Mr. Kabwata an employee of the National Assembly is also listed as an advocate on the Firm's letter head?

[26] In the English case of **Rakusen v Ellis, Munday and Clarke**⁽⁵⁾ the issue arose whether a solicitor, whose co-partner had previously advised a client in a matter, could be prohibited from later acting for the opposite side in that matter, the Court of Appeal laid down the test as being that '**a court must be satisfied that the real mischief and real prejudice will, in all human probability, result if the solicitor is allowed to act.**'

[28] In another English case of **Supasave Retail Ltd v Coward Chance (a firm) and others; David Lee & Co. (Lincoln) Ltd v Coward Chance (a firm) and others**⁽⁶⁾, in which the court considered a situation where a firm that was acting for the plaintiffs merged with a firm that had previously acted for the defendants. The issue before the court was whether the merged firm could properly continue to be retained to act for the plaintiffs. The court observed thus:

The law as laid down is that there is no absolute bar on a solicitor in a case where one partner in a firm of solicitors has acted for one side and another partner in that firm wishes to act for the other side in litigation. The law is laid down that each case must be considered as a matter of substance on the facts of each case.

It was also laid down that the court will only intervene to stop such a practice if satisfied, that the continued acting of one partner in the firm against a former client of another partner is likely to cause (and I use the word 'likely' loosely at the moment) real prejudice to the former client. As it seems to me, what I have to do is lookout the particular circumstances of the case to see whether there is or is not a reasonable anticipation of mischief flowing from the continued provision of legal services by the combined firm to the liquidators.

[29] In **Re A Firm of Solicitors**, the Court of Appeal held that **there is no general rule that a firm of solicitors who had acted for a former**

client could never thereafter act for another client against the former client, but a firm of solicitors would not be permitted to act for an existing client against a former client if a reasonable man with knowledge of the facts would reasonably anticipate that there was a danger that information gained while acting for the former client would be used against him or there was some degree of likelihood of mischief that the confidential information imparted by the former client being used for the benefit of the new client.

[30] In **Prince Jefri Bolkiah v KPMG (a firm)** the House of Lords observed that a party that seeks to restrain his former solicitor from acting in a matter for another client must prove that:

i. **The solicitor is in possession of information which is confidential to him and the disclosure of which he has not consented; and**

ii. **The information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own**

[31] What I discern from the persuasive English cases is that each case must be decided on its own facts and the continued acting of the advocate or firm must be likely to cause real prejudice or mischief to

the other party or former client. It must also be established that the impugned advocate or firm must be in possession of information which is confidential and relevant to the proceedings. Finally, there must be a degree of likelihood, that the confidential information could be used against the party seeking to prohibit the impugned advocate from acting for another party in the matter.

[32] Applying the same to the present case, it is clear that Mr. Kabwata is an employee of the National Assembly and not of the first alleged contemnor nor was he representing her or the National Assembly in the main matter to which they were not a party. Additionally, the conduct or decision to postpone Bill No.7, which led to the petitioners' application for leave to commence contempt and committal proceedings against the first alleged contemnor has already been made and is in public domain. It is based on this decision or conduct and its Judgment of 27th June 2025, that the full bench of the Court would determine whether to grant the petitioners application for leave to commence contempt and committal proceedings against the first alleged contemnor, taking into account the relevant law and principles especially in light of Order 52 Rules 1 and 2 of the Rules of the Supreme Court pursuant to which the application was made. If leave would be granted the first alleged contemnor will be given an

opportunity to defend herself and if not granted the matter would end there.

[33] As I see it therefore, the issue of Mr. Kabwata having or obtaining confidential information which could be passed on to the Firm and used against the first alleged contemnor, regarding this particular application for leave does not arise. Furthermore, the affidavit evidence adduced by the respondent on behalf of the first alleged contemnor does not disclose that Mr. Kabwata previously acted for any of the parties herein and that he has confidential information which could prejudice the first alleged contemnor. My perusal of the authorities from this jurisdiction cited by the respondent also reveal that there must be a nexus between the subject of the case and the confidential information in possession of the advocate.

[34] I will not make any finding regarding Mr. Kabwata's conduct of being employed by the Firm and the National Assembly as the same is subject of a disciplinary case which is under consideration by the National Assembly internal disciplinary procedure except to state that the *ratio decidendi* in **Occupational Health and Safety Institute v James Mataliro**⁽⁷⁾ is that legal practitioners are prohibited from providing legal services to anyone other than their employer.

[35] Having considered the affidavit evidence, Rule 33 (1) (f) and (g) and the authorities referred to herein, I find that the respondent has failed to satisfy the requirements and laid down principles to warrant the removal or prohibition of the Firm from continuing to act for the petitioners in these proceedings. In the absence of confidential information relevant to the proceedings that could be used against the first alleged contemnor, I come to the ineluctable conclusion that the issue of conflict of interest on the part of the Firm has not been proved or demonstrated to the required standard.

[36] Accordingly, I refuse to grant the application seeking to remove or prohibit the Firm as prayed by the respondent. It is accordingly dismissed. I make no order as to costs.

.....*J.Z. Mulongoti*.....

J.Z. Mulongoti
Constitutional Court Judge