IN THE CONSTITUTIONAL COURT OF ZAMBIA 2025/CCZ/0015
AT THE CONSTITUTIONAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

IN THE MATTER OF:

THE CONSTITUTION OF ZAMBIA (AMENDMENT) BILL NO. 7 0F 2025

THE ALLEGED CONTRAVENTION OF ARTICLES 1, 2, 5, 79, 128 AND 267 OF THE CONSTITUTION

AND

A PETITION CHALLENGING THE RULING OF THE SPEAKER OF THE NATIONAL ASSEMBLY ALLOWING THE CONTINUATION OF THE LEGISLATIVE PROCESS IN VIOLATION OF THE CONSTITUTIONAL COURT'S BINDING JUDGMENT OF JUNE, 2025

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA
28 NOV 2025
REGISTRY 3
P O BOX 50067, LUSAKA

BETWEEN

THE LAW ASSOCIATION OF ZAMBIA PETITIONER

AND

THE SPEAKER OF THE NATIONAL ASSEMBLY RESPONDENT

CORAM: Munalula PC, Shilimi DPC, Musaluke, Chisunka, Mulongoti, Mwandenga and Mulife JJC on 6th November, 2025 and 28th November, 2025.

For the Petitioner: Mr M. Bathakathi of Messrs Malisa Legal Practitioners with Mr T. Banda, Mr T. Chongwe and Mr C. Siame of Simeza, Sangwa and Associates.

For the Respondent: Mr M. Muchende SC, Solicitor General with Ms C. Mulenga, Ag Chief State Advocate, Mr P.S. Phiri Principal State Advocate, Mr V. Zulu Senior State Advocate and Mr K. Malikebo State Advocate, all of the Attorney General's Chambers

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RULING

Munalula PC, delivered the Ruling of the Court.

Cases referred to:

1. Margaret Mwanakatwe v Charlotte Scott and Attorney General 2016/CCZ/A018
2. Hakainde Hichilema and Anor v Edgar Chagwa Lungu and 4 Others 2016/CCZ/0034
3. Law Association of Zambia v The President of the Republic of Zambia and 2 Others 2019/CCZ/0013
4. Chishimba Kambwili v Attorney General 2019/CCZ/009
5. Attorney General for the New South Wales v Breweries Employees Union for South Wales (1908) 6 CLR 469
6. Speaker of the Senate and Another v Attorney General and Another; Law Society of Kenya and 2 Others (amicus curiae) [2013] eKLR
7. Judicial Service Commission v Speaker of the National Assembly and 8 Others [2014] eKLR

Legislation referred to:

Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

The Constitution of Zambia Act No. 1 of 1991 as amended by the Constitution of Zambia (Amendment) Act No. 18 of 1996

The State Proceedings Act, Chapter 71 of the Laws of Zambia

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

Other works referred to:

Black's Law Dictionary 8th edition Bryan Garner (ed.)

Osborn's Concise Law Dictionary, 6th edition

Robert E. Palmer, The Confrontation of the Legislative and Executive Branches: An Examination of the Constitutional Balance of Power and the Role of the Attorney General, Pepperdine Law Review, Article 2, Volume 11 Issue 2

[1] This Ruling relates to a Notice of Motion filed by the Applicant – the Law Association of Zambia (henceforth the "Petitioner") on 15th August, 2025 seeking an order directing independent legal representation for the Speaker of the National Assembly (henceforth the "Respondent") pursuant to Article 128 of the Constitution of Zambia as amended by the Constitution of Zambia

(Amendment) Act No. 2 of 2016 (henceforth the "Constitution"). This is in a matter in which the Petitioner instituted proceedings against the Respondent alleging that she has contravened the Constitution.

[2] By way of brief background, the alleged contravention stems from the Respondent's ruling delivered on 9th July, 2025 permitting the continuation of the legislative process relating to the Constitution of Zambia Constitution (Amendment) Bill No. 7 of 2025 (henceforth "Bill No. 7 of 2025"). The ruling came after Bill No. 7 of 2025 was deferred by the Executive on 26th June, 2025 to allow for wider consultations. More pertinently, it was made after 27th June, 2025 when this Court passed Judgment in case number 2025/CCZ/009 and held that the process that yielded Bill No. 7 of 2025 was unconstitutional as it was not People driven.

[3] In its amended petition filed on 11th August, 2025, which is the genesis of these proceedings, the Petitioner alleges breach of multiple constitutional provisions, headlined as follows:

1. **Breach of Articles 1 and 2: Violation of constitutional supremacy;**
2. **Breach of Article 128: Breach of binding authority of the Constitutional Court;**
3. **Breach of Article 79: Failure to comply with procedural requirements for constitutional amendments;**
4. **Breach of Articles 2, 77, 90, 91, 92 and 128: Disruption of separation of powers and the rule of law;**
5. **Breach of Article 5: Violation of democratic principles and popular sovereignty;**

6. **Breach of Article 2: Failure to uphold constitutional duty to defend the Constitution;**
7. **Breach of Articles 8 and 9: Procedural impropriety and abuse of discretion in violation of Articles 8 and 9 of the Constitution;**
8. **Breach of Article 1(5) and Article 267: Complementary constitutional interpretation and judicial review; and**
9. **Misapplication of the concept of Parliament's exclusive cognizance in contravention of Article 2.**

[4] The petitioner seeks both interim and substantive relief. The latter are as follows:

i. **A declaration that the Ruling of the Speaker of the National Assembly permitting the continuation of legislative process for Constitution of Zambia (Amendment) Bill No. 7 of 2025 is unconstitutional, null and void ab initio for contravening the supremacy of the Constitution and failing to comply with the binding Judgment of the Constitutional Court.**
ii. **An Order of certiorari quashing the decision and Ruling of the speaker of the National Assembly dated 9 July, 2025 for being unlawful, unconstitutional and in breach of the Constitution and binding authority of this honourable Court.**
iii. **An affirmation by this Honourable Court of the Constitution as the highest law of the land and the binding authority of the Constitutional Court in all matters relating to constitutional interpretation, enforcement and adjudication, pursuant to Articles 1, 2, 5, 128 and 267 of the Constitution.**
iv. **An order reinforcing the duty of all state organs and officers, including the Speaker and Parliament, to respect, uphold, and comply with all judicial pronouncements of the Constitutional Court, ensuring adherence to the rule of law and constitutional governance.**
v. **Costs of the petition to be awarded to the Petitioner.**

[5] The record shows that whilst the initial petition was served directly on the Respondent, subsequent process including the amended petition were served on the Attorney General upon the latter being instructed by the Respondent to represent her. There was no application by the Respondent

acting through the Attorney General, for the Respondent's misjoinder or substitution by the Attorney General.

[6] Upon the Attorney General filing a response to the Petitioner's motion for interim relief, the Petitioner filed the Notice of Motion in *casu* questioning the legality and constitutionality of the Attorney General representing the Respondent.

[7] The Notice of Motion seeks the following substantive relief:

a. **A declaration that the Attorney General being an executive office holder and the principal legal adviser to the Government under Article 177 of the Constitution, is not competent to represent the speaker of the National Assembly in these proceedings, the same being litigation that concerns the constitutionality of a parliamentary ruling and the internal legislative process.**
b. **A further declaration that, in proceedings where the constitutionality of acts or rulings of the Speaker are directly in issue, the proper and constitutionally compliant course is for the Speaker to be represented by counsel appointed independently by, and accountable solely to, the National Assembly through its authorised mechanisms, such as the parliamentary service commission.**
c. **An order directing the Speaker of the National Assembly to secure and instruct independent legal representation, distinct from the Attorney General or any other law officer of the Executive branch, for the conduct of this matter**

[8] In perusing the Notice of Motion, in particular the Respondent's opposing affidavit and arguments and the Petitioner's reply thereto, it became apparent that the parties raise a procedural issue which we must address before we can address the substantive issues in the Notice of Motion.

[9] It is averred in the affidavit and skeleton arguments in opposition that the Notice of Motion is procedurally incompetent as the issues raised in it are of great constitutional significance and cannot be disposed of through a Notice of Motion. That, the wrong mode of commencement has been engaged as matters for interpretation of the Constitution are to be commenced by originating summons in accordance with Article 128 (3) of the Constitution read with Order IV of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (henceforth the "Court's Rules") as well as the Court's jurisprudence.

[10] The case of **Margaret Mwanakatwe v Charlotte Scott and Attorney General**[1] was cited to argue that the relief being sought should have been initiated by petition or originating summons. That, the Court having been wrongly moved, the Notice of Motion ought to be dismissed in its entirety.

[11] The Petitioner tackled the Respondent's objection in the lengthy Reply filed on 18th of September, 2025. The gist of the Petitioner's Reply is that the Notice of Motion does not purport to commence a fresh cause of action but is brought within an extant petition properly filed under Article 128(3) of the Constitution and Order IV of the Court's Rules.

[12] The Petitioner argued that the Notice of Motion is intended to secure case management directions to facilitate a fair, efficient and impartial

adjudication of the matter. The Petitioner further argued that this Court has the inherent and constitutional powers to protect the integrity of its proceedings by regulating representation, *ergo* the Attorney General cannot interfere with this power. That, the authorities cited by the Respondent are misplaced and distinguishable. Articles 1, 118 and 267 of the Constitution were cited in support of the procedural soundness of the motion.

[13] It is evident that the parties disagree over the procedural competence of raising a question requiring interpretation of the Constitution as a preliminary issue within the same matter. We have to first deal with this procedural question as the Notice of Motion's competence must be settled before we can determine it on the merits.

[14] We agree with the Petitioner to the extent that the application is necessary to secure case management directions to facilitate a fair, efficient and impartial adjudication of the matter. Accordingly, it must be settled in order for the matter to proceed judiciously. Order V of the Court's Rules is instructive in providing that the Court may at any stage of the proceedings deal with the question of who is a party to proceedings before the Court.

[15] The fact that the determination of the question extends to representation stipulated by the Constitution and requiring resort to the Constitution does not take away from the fact that the question of representation must be

settled not only within the same matter but also before the main matter is heard.

[16] As our jurisdiction relates to the Constitution, incidental constitutional questions related to the main matter are bound to arise in the course of hearing a matter and it is not only necessary but neater that all issues arising in the matter are conclusively dealt with and settled in the same matter.

[17] In this case the question before us arose in a properly filed matter and we cannot determine the matter without inadvertently settling the question, one way or the other. It is important that we do so in a reasoned and conclusive manner that will bring clarity and put the issue to rest.

[18] Be that as it may, we wish to remind the parties that we have had occasion to address this same question in the case of **Hakainde Hichilema and Anor v Edgar Chagwa Lungu and 4 Others**[2]**,** an originating summons relating to the swearing into office of the 1st and 2nd Respondent in that matter. Therein, the Attorney General sought joinder in place of the 3rd and 4th Respondents (the Chief Justice and Deputy Chief Justice respectively) as well as to represent the public interest.

[19] On the basis of Article 177 (5) of the Constitution, a single Judge of the Court, heard the application and held that the Attorney General be joined as

keeper of the public interest and to replace the 3rd and 4th Respondent who, had been proceeded against in their official capacity.

[20] In another matter, a full bench of seven judges of this Court, considered the same question. This was in the case of **Law Association of Zambia v The President of the Republic of Zambia and 2 Others**[3] whence the Respondents sought misjoinder of the 1st and 3rd Respondent (the Republican President and National Assembly respectively). On the Court's reasoned interpretation of Article 177 (5) (c) of the Constitution, the 1st and 3rd Respondents were misjoined from the proceedings leaving only the Attorney General.

[21] In view of the foregoing decisions which we affirm, our short answer to the Respondent's objection is that the Notice of Motion is competent and falls within our jurisdiction at this stage of the proceedings. The objection is of no consequence and is dismissed.

[22] We now turn to the substantive question raised by the Petitioner which appears to be a fresh take on the issues raised in the **Hakainde Hichilema and Anor v Edgar Chagwa Lungu and 4 Others**[2] and the **Law Association of Zambia v The President of the Republic of Zambia and 2 Others**[3] cases. The parties herein essentially take opposing positions on the representative mandate of the Attorney General in relation to the

Respondent, in the specific context of the Respondent's ruling over Bill No. 7 of 2025. Specifically, whether the Attorney General can represent the Respondent in the matter.

[24] We begin by summing up the parties' arguments in support of and against the relief sought. The Petitioner relied on the text of the Constitution, the structure of the Constitution and the jurisprudence of this Court and other apex courts to aver at length that this Court has supervisory power over its own process and can regulate representation before it.

[25] The Petitioner took refuge in the separation of powers as enshrined in the Constitution, noting that the Respondent is sued in her official capacity in relation to a ruling made in internal proceedings of the National Assembly. The Petitioner cited the case of **Chishimba Kambwili v Attorney General**[4] in support of the claim that the Respondent's actions are justiciable and that the Respondent is answerable in her own right and should therefore instruct independent counsel.

[26] The Petitioner contended that the functions of the Respondent are performed independent of the Executive. It described the Attorney General as an officer of the Executive serving as its principal legal adviser, thereby exercising functions on behalf of the Government of the Republic of Zambia because the Executive is the Government.

[27] The Petitioner further submitted that the constitutional and statutory framework, specifically Articles 62, 77 and 177 of the Constitution as well as section 12 of the State Proceedings Act, Chapter 71 of the Laws of Zambia, (henceforth the "State Proceedings Act") confine the Attorney General's representation to Government as a litigant and this does not extend to the Legislature when the latter is acting in its own institutional capacity. That Article 177(5)(c) of the Constitution does not authorise the Attorney General to act for the Respondent in disputes arising from parliamentary rulings.

[28] The Petitioner further averred that, Articles 62 and 77 of the Constitution vest legislative power in the Legislature thus demonstrating its independence. That, the Attorney General's mandate is confined to representing the Executive in proceedings to which Government is a party. That neither the Constitution nor the State Proceedings Act extend the coverage to the Respondent.

[29] That, the structural separation between the Executive and the Legislature is a core feature of this Country's constitutional order meant to preserve institutional independence and set clear lines of accountability. Thus, if the Attorney General is allowed to represent the Respondent, there is a possibility of there being a conflict of interest and an erosion of public confidence in the impartiality of the judicial process.

[30] In *viva voce* submissions, all four counsel for the Petitioner argued spiritedly on the meaning of the term 'Government' in the Constitution. They contended that they had counted 99 references in the Constitution to the term 'Government', which establish that the term refers to the Executive branch of government. That to read the Constitution otherwise would effectively 'kill' its separation of powers architecture.

[31] Further, that there is a conflict of interest on the part of the Attorney General arising in the specific circumstances of this case given the role played by the Attorney General in Bill No. 7 of 2025; a conflict that militates for and supports the plea to this Court to order independent counsel for the Respondent.

[32] The Attorney General, arguing on behalf of the Respondent, proffered a different view of the intention behind Article 177 of the Constitution. He questioned the invitation by the Petitioner for this Court to restrict the Attorney General's representation on the basis that constitutional text limits the Attorney General's representation mandate to Government as the Executive, arguing that the mandate includes all three arms of Government which is one entity.

[33] That in the event of any conflict of interest, it is for the Attorney General to elect to outsource counsel if necessary. That doing so does not rob that office of its constitutional mandate of representing Government which extends to the Respondent who made the impugned ruling in her capacity as a State officer.

[34] The Respondent argued that there is only one Government sharing the professional services of the Attorney General as a constitutional office holder. Kenyan and Australian dicta were cited to further support this claim. Specifically, the cases of **Attorney General for the New South Wales v Breweries Employees Union for South Wales**[5], was cited to support the manner in which to interpret the Constitution.

[35] The Kenyan case of **Speaker of the Senate and Another v Attorney General and Another; Law Society of Kenya and 2 Others (amicus curiae)**[6] was cited on the contextualisation of the separation of powers within the Constitution. Further, the case of **Judicial Service Commission v Speaker of the National Assembly and 8 Others**[7] was cited on the role of the Attorney General as envisaged by the Constitution.

[36] It was pointed out that the Attorney General has a constitutional duty to appear on behalf of the National Government which includes the Legislature,

Executive and Judiciary. That the Attorney General, in doing so must find the middle ground to enable him play his constitutional role in proceedings before the court in a manner that promotes, protects and upholds the rule of law and the public interest.

[37] The Respondent disagreed with the Petitioner's interpretation of Articles 113 and 177 of the Constitution and the separation of powers architecture, arguing instead that Article 113 of the Constitution made the Attorney General an *ex officio* member to give professional advice to the Cabinet as it executes its functions. Further, that State chambers have various officers hence eliminating any possibility of a conflict of interest.

[38] He argued further, that the concept of Attorney General as alter ego of the State, is elaborated in section 12 of the State Proceedings Act, and correctly captures the intent of the framers of the Constitution that the Attorney General represents all three organs/arms of Government. In *viva voce* submissions, the Solicitor General, representing the Respondent, reiterated the core argument, that the Government is one, and is made up of three branches all of which are represented by the Attorney General as provided in Article 177(5)(c) of the Constitution.

[39] The Petitioner's reply essentially dealt with two points. The first was a repetition of the argument on the meaning of "Government" in view of the separation of powers that is the bedrock of the Constitution. The Petitioner rejected a broad conception of Government as inclusive of the three State organs, and represented by one Attorney General as in its view that would collapse the carefully crafted separation of powers in which each arm acts as a check on the others. The Petitioner contended that, Article 177 of the Constitution must be read with Articles 90 and 91 thereof showing that the Attorney General can only represent Government as the Executive branch.

[40] The second point was the remit of the Attorney General which the Solicitor General had argued, was anchored on the alter ego rationale both historically and textually. In response the Petitioner contended that, section 12 of the State Proceedings Act is a procedural device to give the Executive a legal personality in litigation and it does not convert the Attorney General into counsel for Parliament or the Judiciary.

[41] The sum of the points made by the Petitioner in its reply was that the separation of powers entails that the Attorney General is Executive facing and his representation of the Legislative arm of Government heightens rather than cures the risk of a conflict of interest which is inimical to a proper determination of the issues raised in the matter.

[42] We have considered the Notice of Motion and the accompanying affidavit and skeleton and oral arguments. We have also considered the affidavit filed in opposition and the opposing skeleton arguments and oral submissions as well as the affidavit and arguments in reply both written and oral. We are grateful for the parties' extensive submissions.

[43] We have deliberated long and hard on the question before us. In our considered view, it boils down to a claim by the Petitioner that it is unconstitutional and a breach of the separation of powers for the Attorney General to represent the Respondent in the petition in *casu* because the Attorney General is Executive facing. That we should order the appointment on the Respondent's part, of independent counsel. The claim is based on the Petitioner's understanding of Article 177 of the Constitution. In the Petitioner's view, 'the Government' as used in the Constitution is equivalent to 'the Executive', therefore the Attorney General is the legal advisor of the Executive. For ease of reference, the full text of Article 177 reads:

> **177. (1) There shall be an Attorney-General, who shall be appointed by the President, subject to ratification by the National Assembly.**
> **(2) The Attorney-General shall not hold another public office.**
> **(3) The Attorney-General shall be a person qualified to be appointed as a judge.**
> **(4) The Attorney-General shall not be subject to the direction or control of a person or an authority in the performance of the Attorney-General's functions.**

(5) The Attorney-General is the chief legal adviser to the Government and shall -
(a) be head of the Attorney-General's Chambers;
(b) sign Government Bills to be presented to the National Assembly;
(c) represent the Government in civil proceedings to which Government is a party;
(d) give advice on an agreement, treaty or convention to which Government intends to become a party or in respect of which the Government has an interest before they are concluded, except where the National Assembly otherwise directs, and subject to conditions as prescribed; and
(e) perform other functions, as prescribed.
(6) The Attorney-General's Chambers shall be devolved to the Provinces and progressively to districts.

[44] The question as we see it raises two related issues. The first, is whether given the Constitutional architecture of separation of powers 'Government' means the Executive organ hence restricting the Attorney General's mandate to the Executive in exclusion of the other organs namely the Legislature and the Judiciary. The second is whether the Attorney General is conflicted in view of his perceived loyalty to the Executive. We will deal with the two issues consecutively.

[45] On the first issue, our perusal of the Constitution, read as a whole, brings us to the ineluctable conclusion that the term 'Government' is used in Article 177 and in the rest of the Constitution in a broad and inclusive sense. Two provisions serve to illustrate: Article 266 of the Constitution defines 'state organ' as 'Executive, Legislature or Judiciary' and Article 207(1)(a) of the Constitution reads, '... [t]he Government may as prescribed raise a loan or

grant on behalf of itself, a State organ, State institution or other institution' (*emphasis added*). It is clear that Government 'itself' includes the Legislature, and therefore by implication the Respondent, and is not just the Executive organ.

[46] Our position is shored up by Black's Law Dictionary which defines 'Government' in generic terms as the 'structure of principles and rules determining how a state is regulated'; as the 'sovereign power in a nation or state'; as an 'organisation through which a body of People exercises political authority'; and as the 'machinery by which sovereign power is expressed'. 'Government' thus refers collectively to the political organs of a country regardless of their function or level and regardless of the subject matter they deal with. We are of the firm view that all three branches, arms or organs of government together constitute Government.

[47] We hasten to state that there is nothing novel about this conclusion. The meaning of 'Government' and the role of the Attorney General were settled by this Court in the **Law Association of Zambia v The President of the Republic of Zambia and 2 Others**[3] case, a matter that was in fact between the same parties before us in *casu*. Therein, we stated as follows:

> **... the Petitioner's argument suggesting that the President and the National Assembly are not Government is not tenable. Granted the Constitution does**

not define the term 'government', used in Article 177 (5) (c). That notwithstanding, we note that the term State organs is defined in Article 266 of the Constitution to mean the Executive, Legislature or Judiciary. It is trite that these are what are referred to as the three branches or arms of Government. Also, Article 266 aforesaid defines 'State office' to include the office of President, Vice-President, Speaker, Deputy Speaker, Member of Parliament, Minister and Provincial Minister.' In terms of our Constitution, the President is the head of the Executive and the Speaker is the head of the Legislature or National assembly, two of the three arms of Government. In Article 177(5) (c) of the Constitution, the Attorney General is identified as the officer with the mandate to represent the Government in civil proceedings in which the Government is a party.

.....

The allegations brought by the Petitioner against the Respondents involve the performance of their constitutional mandate in the legislative process in which the Executive and the Legislative branches of Government have specific roles. Our considered view is that the roles performed are official in nature and any allegations of wrong-doing in the process should, therefore be directed at the Attorney General who, in terms of Article 177 (5)(c), has the mandate to represent Government in any ensuing proceedings.

.....

On the whole, considering that the allegations against the 1st and 3rd Respondents in these proceedings are in respect of the performance of their functions as the Executive and the Legislature respectively, the same being arms of Government, we find that in accordance with Article 177 (5) (c) of the Constitution, the proper party to represent them is the Attorney General, the 2nd Respondent in these proceedings. We further find that the 1st and 3rd Respondent were improperly joined to these proceedings and pursuant to Order V rule 4(a) of the Court's Rules, we order that they be removed as parties to these proceedings.

[48] The sum of our position is that, while the term 'Government' is a multi-faceted and multi-layered term which undoubtedly refers to all three arms acting severally or individually, the Attorney General represents all three in

legal proceedings in which they are involved because Government is one and the Attorney General is one of the components of Government.

[49] We now turn to the second issue we isolated which is tied to the Attorney General's close working relationship with the Executive and raises questions about his ability to maintain a professional distance from the Executive so as to represent the Respondent professionally and in the public interest. We have considered the issue.

[50] It is evident that the Petitioner fears that the representation model enshrined in Article 177 collapses the separation of powers by subjecting the Legislature to the Executive and compromising the Attorney General's representation of the former. The Attorney General on the other hand contends that the model entails that his office is the 'alter ego' of the State and in particular the Government, hence there is no negative effect on the Respondent or on the separation of powers as envisaged by the framers of the Constitution.

[51] Both parties relied on the Kenyan case of **Judicial Service Commission v Speaker of the National Assembly and 8 Others**[7] (among other reasons) to make their point. Whilst the Attorney General cited the case extensively to show that his constitutional duty of representation is

inescapable and he is well equipped constitutionally and otherwise to carry it out without fear or favour, the Petitioner contended that the Kenyan Court acknowledged the danger in the Attorney General representing multiple arms of Government whose immediate interests may conflict resulting in the Attorney General's failure to uphold the public interest, constitutionalism and the rule of law.

[52] In considering the issue, we note that the Respondent was acting in her official capacity, placing the matter squarely within the ambit of the Constitution. We begin by agreeing with the Petitioner that the answer to the question lies in a textual reading of the Constitution. We also agree that authorities from other jurisdictions should be resorted to in order to shore up rather than to instruct our interpretation of the constitutional dicta.

[53] We have considered the relevant constitutional provisions, in particular Article 1(3) on the Constitution binding all persons, organs and institutions, Article 2 on every person's duty to defend the Constitution, Articles 8 and 9 on the national values and principles and their application, Article 173 on the values and principles of public service, Article 113 making the Attorney General an *ex officio* member of Cabinet, Article 177 creating the office of Attorney General as legal adviser and legal representative of Government and as an independent constitutional office, Article 118 on the principles of

judicial authority, Article 122 on the need for public office holders to protect the independence, dignity and effectiveness of the Judiciary, Article 267 on good governance and judicial review of administrative decision making.

[54] We also looked at generic meanings of the term 'Attorney General'. Black's Law Dictionary defines 'Attorney General' as the chief law officer of a State responsible for advising the government on a legal matter and representing it in litigation. Equally, Osborn's Concise Law Dictionary, defines the term 'Attorney General' as the principal law officer of the Crown and head of the Bar, appointed by Letters Patent and holding office at the pleasure of the Crown. Civil proceedings against the Crown maybe instituted by or against the Attorney General in lieu of the appropriate government department and *vice versa*.

[55] The Attorney General in Zambia is a constitutional office holder qualified to hold the office of judge and cannot hold another public office. Article 141 of the Constitution on the qualifications of a judge, which are proven integrity and ten years of legal practice, entails that the Attorney General is a legal practitioner of established exemplary standing, affiliated to the Law Association of Zambia and an officer of the court. He or she is not subject to the direction or control of a person or an authority in the performance of his or her functions even though the tenure of office is held at the President's

pleasure. Under Article 113 of the Constitution, the Attorney General sits in Cabinet as an *ex officio* member to render professional legal advice.

[56] Under Article 177(5) of the Constitution, the Attorney General is the chief legal adviser to the Government. The Attorney General heads his or her Chambers and is duty bound to represent the Government. We are of the firm view that the Attorney General as a constitutional functionary, is an integral part of Government and the repository of legal expertise and professional legal services, particularly those of a civil nature, throughout the Government system.

[57] Therefore, the Attorney General is essentially 'in-house counsel' and as such the rightful office to represent Government. The fact that Government is made up of multiple organs and institutions which are separated by constitutional design does not mean that each entity must have independent locus or legal standing. Our constitutional structure entails that proceedings against any one of them are against the Government as a whole hence are most conveniently and efficaciously brought in the name of the Attorney General as a component or department of Government.

[58] It follows that the Attorney General has no constitutional mandate to act in the interest of the Executive in a manner detrimental to the rest of

Government and we do not expect him to do so in the matter before us. As a matter of common law and practice and on a holistic reading of the Constitution, the Attorney General is the keeper of the public interest.

[59] The effect of this is not to collapse the separation of powers but to accurately and efficaciously reflect the separation of powers architecture of our Constitution and ensure coordinated, orderly advice and representation key to a functional Government. The office is afforded an overview of all the legal issues affecting the entire Government system and is thus well positioned to avoid contradictory positions and offer optimal services that protect the public interest and the Constitution. By servicing the Government, as a whole, the Attorney General fulfils his constitutional duty.

[60] We thus take comfort in and adopt the words of Robert E. Palmer who in his article entitled **The Confrontation of the Legislative and Executive Branches: An examination of the Constitutional Balance of Powers and the Role of the Attorney General** observed that:

> **In constitutional theory, although perhaps not in reality, his [Attorney General's] obligations are clear. As an individual entrusted with the faithful execution of the law, his ultimate duty lies with the Constitution and not with the President**

[61] We have read the Kenyan case of **Judicial Service Commission v Speaker of the National Assembly and 8 Others**[7]**.** The case brings to the

fore, the conflict of interest that may arise as the Attorney General renders advice or representation which maybe contradictory because it focuses on the specific interests of one arm of Government at the expense of another. The Kenyan Court ruled that the Attorney General is expected to rise above and act in pursuance of the common and shared public interest.

[62] We agree with the Kenyan dicta and in view of the very real concerns raised by the Petitioner about the lived reality and factual matrix underpinning this case, we wish to provide reassurance to the Petitioner by elaborating on the numerous ways in which the constitutional framework guards against the Attorney General's vulnerability to conflicting interests.

[63] To begin with, Article 177 of the Constitution falls under Part XIII of the Constitution, entitled 'Public Service'. Part XIII opens with the mandatory values and principles of public service, namely, the highest standards of professional ethics, integrity, fairness, impartiality accountability and effectiveness. Article 177 of the Constitution must thus be read with Article 262 of the Constitution which provides as follows:

> **A person holding a public office shall not act in a manner, or be in a position where the personal interest of that person conflicts or is likely to conflict, with the performance of the office.**

[65] While the predecessor to Article 177 of the Constitution sat in Part IV of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No 18 of 1996 entitled 'the Executive', Article 177 of the Constitution sits in Part XIII, showing that the framers of the Constitution intended to strengthen the separation of the office from the Executive. Representation explicitly applies to all the arms of Government; with the Attorney General servicing the whole of Government in a manner that promotes the shared public interest of fidelity to the Constitution, in particular, the separation of powers architecture and rule of law.

[66] Further, Article 122 of the Constitution, places on all public officers, a duty to protect the independence, dignity and effectiveness of the Judiciary. The Attorney General is bound by Articles 1 and 2 of the Constitution, to defend the Constitution. He or she is enjoined to apply the values as stipulated in Articles 8 and 9 of the Constitution. Article 267(4) of the Constitution subjects his or her actions to judicial review. Professionally, the Attorney General is 'policed' by the Petitioner itself.

[66] In conclusion, we affirm our earlier decision in the case of **Law Association of Zambia v President of the Republic of Zambia and 2 Others**[3] and dismiss the Notice of Motion and the relief sought therein. We are of the firm view that proceedings against the Respondent be instituted in

the name of the Attorney General as a part of the Government which includes the Respondent and as the legal representative of the Government.

[67] We hereby order the joinder of the Attorney General as the Respondent in these proceedings, in place of the Speaker, by way of Order V rule 4 of the Court's Rules, which provides:

> **The Court may, at any stage of the proceedings, upon or without the application of a party, and on such terms as may appear just order**
>
> **(a) that the name of any party improperly joined be struck out; and**
>
> **(b) any person who ought to have been joined, or whose presence before the Court may be necessary in order to enable it adjudicate upon and settle the matter, be added.**

There is no order as to costs.

M M Munalula (JSD)

Constitutional Court President

A.M Shilimi

Constitutional Court Deputy President

M. Musaluke

Constitutional Court Judge

M.K. Chisunka

Constitutional Court Judge

J.Z. Mulongoti

Constitutional Court Judge

M.Z.Mwandenga

Constitutional Court Judge

K. Mulife

Constitutional Court Judge