

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2024/HP/ARB012

IN THE MATTER OF:

**AN APPLICATION FOR INTERIM ORDER OF STAY
OF DECISION OF THE LEGAL PRACTITIONERS
COMMITTEE OF THE LAW ASSOCIATION OF
ZAMBIA TO SUSPEND JOSEPH NOMBO SIANYABO
FROM PRACTISING LAW DATED 12TH JULY 2024.**

BETWEEN:

JOSEPH NOMBO SIANYABO

APPLICANT

AND

**THE LEGAL PRACTITIONERS COMMITTEE OF
THE LAW ASSOCIATION OF ZAMBIA**

RESPONDENT

Before:

The Hon. Mr. Justice Charles Zulu.

The Applicant:

No Appearance.

For the Respondent:

***Mr. C. Ngoma, of Messrs Ngoma Legal
Practitioners.***

R U L I N G

Cases referred to:

- 1. John Sangwa v the Legal Practitioners Committee of the Law Association of Zambia (SCZ Appeal No. 121 of 2013).***
- 2. General Medical Council v Spackman [1934] A.C. 627.***
- 3. Stripes Zambia Limited v Cinderella Investment Ltd & Sana Industries Ltd (SCZ Appeal No. 200/2012).***
- 4. Ahmed Abad v Turning and Metals Limited (1987) Z.R. 86.***
- 5. Harton Ndove v National Educational Company of Zambia Limited (1980) Z.R. 184.***
- 6. VDF Property Management Limited v Ronald Van Vlaanderen (SCZ Appeal No. 190/2014).***
- 7. Dunhill (Alfred Ltd) v Sunoptics (1978) F.S.R 337.***

Legislation and other materials referred to:

1. **The Arbitration Act No. 19 of 2000.**
2. **The Law Association of Zambia Act Chapter 31 of the Laws of Zambia.**
3. **The Arbitration (Court Proceedings) Rules Statutory Instrument No. 75 of 2001.**
4. **The Law Association of Zambia (General) Rules, 1996.**

1.0 INTRODUCTION

- 1.1 This ruling is in respect of an application by the Applicant, Joseph Nombo Sianyabo, dated July 16, 2024 for an order of interim measure of protection to stay the decision of the Legal Practitioners Committee (LPC) to suspend him from practising law.
- 1.2 The application was made pursuant to section 11 of the **Arbitration Act No. 19 of 2000** (the Act), read together with Article 9 of the **United Nations Commission on International Trade Law (UNCITRAL) Model Law** and rule 9 of the **Arbitration (Court Proceedings) Rules Statutory Instrument No. 75 of 2001.**
- 1.3 An *ex parte* order staying the Applicant's suspension was granted on July 17, 2024, and the matter was thereafter reserved for *inter partes* hearing.

2.0 HEARING

- 2.1 The matter was scheduled for *inter partes* hearing on September 30, 2024. The Applicant was not present, but the Respondent's Counsel, Mr. Ngoma was in attendance. And since the parties duly filed their respective documents for and against the

application, and with consensus from Mr. Ngoma, it was proposed that I proceed to determine the matter on its merits based on the documents filed.

2.0 THE PARTIES' AFFIDAVIT EVIDENCE

- 2.1 An affidavit in support was deposed to by Joseph Nombo Sianyabo, the Applicant. He stated that he was a Legal Practitioner of 13 years standing at the Bar and was in the employ of the National Assembly as Director (Legal Services) and a member of the Law Association of Zambia (LAZ).
- 2.2 He stated that he held other portfolios at national level: Chairperson of the Competition and Consumer Protection Tribunal, and held advisory roles on various matters pending hearing and determination before the Constitutional Court and the High Court.
- 2.3 He stated that he was summoned by the LPC to hearings of a complaint against him on May 10, 2024, June 14, 2024 and July 12, 2024. And that at the said hearings, he was not given proper opportunity to be heard or afforded the chance to properly prosecute his defence before the LPC. That consequent to the said hearings, the LPC suspended him from practising law and referred the matter to the Disciplinary Committee.
- 2.4 He stated that he was aggrieved by the decision of the LPC, and was desirous to appeal against the same by way of arbitration.
- 2.5 An affidavit in opposition was deposed to by Stephen Mbayani Lungu SC and the Co-Convenor of the LPC.

- 2.6 Mr. Lungu opened his affidavit by stating that the Applicant had deliberately omitted to state material facts surrounding the case. He recounted that on December 5, 2023 the LPC received a complaint from Hon. Edgar Sing'ombe regarding the Applicant's failure to account for funds in the sum of K200, 000.00 deposited into his account to complete a property acquisition transaction; whereof the Applicant was allegedly engaged by Hon Sing'ombe as his advocate to finalize a property acquisition transaction.
- 2.7 He explained that after the Applicant failed to complete the transaction, the transaction was concluded through another legal practitioner. He said the complainant took out an action in the High Court to recover the sum of K200, 000.00. And that the action culminated in a consent judgment dated September 26, 2023. That despite the consent judgment, the Plaintiff failed to pay, prompting the complainant to escalate the matter to the LPC.
- 2.8 He added that on December 19, 2023 the Applicant was served with the complaint, and was asked to respond, but decided not to respond. He said at the hearing held on July 12, 2023 the LPC resolved to suspend the Applicant from practising law, and the matter was referred to the Disciplinary Committee.

3.0 THE PARTIES' ARGUMENTS

- 3.1 The Applicant cited rule 16 of the **Law Association of Zambia (General) Rules, 1996**, which provides:

- 3.1.1 ***Any question or difference between the Association and members or between members relating to professional conduct, etiquette or practice, shall be resolved in accordance with the Arbitration Act with such modifications as circumstances may permit.***
- 3.2 And the case of **John Sangwa v the Legal Practitioners Committee of the Law Association of Zambia¹** was vouched, wherein it was held:
- 3.2.1 ***We have rationalized the agreement by the Law Association of Zambia and its members to resort to arbitration and not court in dealing with their differences.***
- 3.3 It was argued that the Applicant sought an order for an interim measure of protection to stay the decision of the LPC to suspend the Applicant from practising law until the dispute between the Applicant and the LPC/LAZ was heard and determined via arbitration. It was observed that the arbitral tribunal was yet to be appointed.
- 3.4 It was contended that the Applicant had a good case because the LPC abrogated the rules of natural justice given the manner the proceedings were handled. The case of **General Medical Council v Spackman²** was relied on, wherein it was held:
- 3.4.1 ***If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of departure from the essential principles of justice. The decision must be declared to be no decision.***

3.5 I was urged to grant the interim measure of protection, to stay the decision of the LPC to suspend the Applicant from practising law.

3.6 In opposing the application, the circumference of the issues to be resolved were raised as follows:

- 3.6.1
- (i) whether rule 16 of the Law Association of Zambia (General) Rules applies to disputes regarding professional misconduct as between a member of the public and a practitioner;**
 - (ii) whether the injunction sought by these proceedings satisfied the conditions stipulated in section 11 (4) (a) of the Arbitration Act;**
 - (iii) whether the Applicant's material non-disclosure negates the injunction sought.**

3.7 In respect of the first issue, it was contended that rule 16 of the **Law Association of Zambia (General) Rules, 1996**, was only applicable to disputes between the LAZ and its members and, between the members themselves. It was thus argued that the said rule did not extend to disputes arising between members of the public and a legal practitioner. The case of **John Sangwa** (supra) was equally cited by quoting the following remarks:

3.7.1 ***The provision is in effect an arbitration agreement between the members of the law Association of Zambia and the Law Association of Zambia and as between the members themselves to refer any dispute they may have between them relating to professional conduct, etiquette or practice to arbitration.***

The legal profession is a noble profession which thrives on good public opinion and reputation.

As such, any issue pertaining to ethical or professional conduct of the members and indeed, practice, should be resolved away from the glare of the public and press to preserve, not only the integrity of the Law Association of Zambia, but also its members and the profession. Hence, the preferred choice of arbitration as the forum for dispute resolution which is confidential in nature.

3.8 It was submitted that the only recourse a member of the general public had against a legal practitioner for redress against alleged professional misconduct was via a complaint to the LPC, in accordance with sections 13(7) (e) and 67 of the **Law Association of Zambia Act**. It was restated that the subject case involved Mr. Edgar Sing'ombe, on the one hand, and the Applicant, on the other hand. I was urged to hold that the "anticipated dispute" herein is not arbitrable; for being outside the scope of rule 16 of the Law Association of Zambia (General) Rules, 1996 because, it involves a matter between the complainant, not a member of the LAZ and the Applicant, a member of the LAZ.

3.9 In relation to the second issue, section 11 (4) (a) of the Arbitration Act was cited which provides:

3.9.1 ***The court shall not grant an order or injunction under this section unless:***

(a) the arbitral tribunal has not yet been appointed and the matter is urgent.

3.10 It was argued that based on the history of the case, which arose in 2023, and heard before the LPC in July 2024, there was nothing urgent about the Applicant's application. It was added

that time was afforded to the Applicant to respond, but instead sought recourse to arbitration.

3.11 And in relation to the third issue, it was contended that the Applicant was duty bound to disclose all the material facts relevant to the determination of the application, and failure to do so was fatal. The case of **Stripes Zambia Limited v Cinderella Investment Ltd & Sana Industries Ltd**³ was cited, wherein the Supreme Court held:

3.11.1 ***As mentioned above, there is an obligation on the applicant for an injunction, and particularly, in the case of “ex parte” application, to inform the court of any point that may help the other side or that it believes the other side would have made if it had the opportunity to be heard. This duty extends to facts that the Applicant or the other side would have known about had they made proper enquiries (Order 29/1/33 RSC). If the court subsequently considers that the party applying for the injunction has not made a proper enquiry or full disclosure, it will set aside the injunction. For these reasons grounds 2 and 6 cannot succeed.***

3.12 I was urged to dismiss the application

4.0 DETERMINATION

4.1 I have carefully considered the application. The primordial issue for determination is whether rule 16 of the **Law Association of Zambia (General) Rules, 1996** (hereinafter called “Rule 16”) is applicable to this case. The effect and application of Rule 16 was meaningfully espoused in the case of **John Sangwa** (supra). And for emphasis, it was stated that:

4.1.1 ***This provision is in effect an arbitration agreement between the members of the Law Association of Zambia and the law Association of Zambia and as between the members themselves to refer any dispute they may have between them relating to professional conduct, etiquette or practice to arbitration.***

4.2 In the present case, the Applicant declared a dispute against the LPC of the LAZ as regard the alleged unfair manner in which it dealt with the disciplinary proceedings, leading to his suspension. The nature of the dispute is within the purview of Rule 16. The issues raised are not against the complaint, but against the LPC/LAZ. The anticipated arbitration does not relate to the Applicant verses the complainant, but the Applicant verses the LPC/LAZ.

4.3 The interim measure of protection, in other words the stay: to stay the decision of the LPC was granted pursuant to section 11(1) of the Arbitration Act. And procedural formalities as to how the application is to be settled are provided for under rule 9(3) of Arbitration (Court Proceedings) Rules. But, neither section 11 of the Arbitration Act or rule 9(3) of the Arbitration (Court Proceedings) Rules disclose factors that should inform the grant of the order under section 11, after from the conditions stated in section 11(4). However, as to what should inform the discharge of an order granted *ex parte*, rule 9(7) of the Arbitration (Court Proceedings) Rules, provides:

4.3.1 ***9(7) An ex parte order granting an interim measure of protection may be discharged by the court in accordance with the rules of the court upon cause being shown.***

- 4.4 The above stated provision, at *inter partes* hearing imposes on the opposing party, the evidential burden to deprecate the continued existence of the interim measure of protection, when granted *ex parte*. Again, the law, and understandably so, ends at generally stating that, the discharge is tenable in accordance with the rules of the court upon proof of sufficient cause. The effect of this is that, the court is conferred with wide discretion in matters of this nature, but that discretion must be exercised wisely, within well settled principles, devoid of arbitrariness.
- 4.5 It is safe to reason that principles governing the grant or otherwise of injunctive reliefs under common law are measurably helpful in making a determination hereof. Inevitably, the Court stands to be guided *mutatis mutandis* by some principles governing injunctive remedies.
- 4.6 In *Ahmed Abad v Turning and Metals Limited (1987) Z.R. 86⁴*, the Supreme Court guided as follows:
- 4.6.1 ***An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial, but it cannot, in our considered view, be regarded as a device by which the applicant can attain or create new conditions, favourable only to himself, which tilt the balance of the contending interests in such a way he is able, or more likely to influence the final outcome by bringing about an alteration to the prevailing situation which may weaken the opponents' case and strengthen his own.***
- 4.7 Additionally, the object of an injunction is to maintain the *status quo* (see *Harton Ndove v National Educational Company of Zambia Limited*⁵ In the context of this

application, it can be said that the object of granting an interim measure of protection under section 11 of the Act is to preserve the supposed *status quo*. And as to the meaning or measure of the period covering the *status quo*, in **VDF Property Management Limited v. Ronald Van Vlaanderen**⁶ the Supreme Court held:

4.7.1 ***Maintaining the status quo means maintaining the situation as it is now or as it was before the recent change.***

4.8 And the learned authors of **Snell's Equity** explicated the import of *status quo* to mean:

4.8.1 ***The status quo refers to the period immediately preceding the issue of the writ (or notice of motion if substantially later) and not the period before the conduct which led to the litigation.***

4.9 Furthermore, in **Dunhill (Alfred Ltd) v Sunoptics**⁷ the *status quo* was taken to mean: the existing state of things.

4.10 It is pointed to note that, the interim measure of protection sought herein does not ordinarily seek to stay the disciplinary proceedings pending arbitration, but rather seeks to stay the actual decision of the LPC. The grant of an interim measure of protection in the circumstances: to stay the suspension of the Applicant has the undesirable consequence of reversing the *status quo*, and to interfere with the proceedings of the LPC, by effectively reversing the suspension.

4.11 I agree that the Applicant at the time he was granted the *ex parte* order to stay his suspension, neglected to disclose material facts, which facts were only disclosed in the opposing

affidavit. Disclosure of material facts does not only put the court in an informed position to ascertain whether an applicant's hands are soiled or not, but also assists the court to *prima facie* assess the prospect of success of an applicant's case before the arbitral tribunal.

4.12 The Applicant herein shied away from disclosing sufficiently what led to the complaint and subsequent suspension. Paradoxically, while he alleged that the principles of natural justice were abrogated by the LPC, he did not disclose that when invited to respond to the complaint, to enable the LPC weigh his defence, he chose not to.

4.13 The danger of breaching the duty to disclose material facts at the time of obtaining an *ex parte* order are well known in the realm of injunctive remedies. The remedy herein being one that is discretionary in nature and inspired by principles of equity, the applicability of the fate resulting from non-disclosure of material facts is equally unavoidable here.

4.14 And while the Applicant in general alleged that he was not given a fair opportunity to present his case, produce evidence, and to call witnesses, a copy of the minutes of proceedings exhibited by the Respondent show a summary of his defence. And the minutes contain the decision of the LPC, thus:

4.14.1 ***With regard to the complaint, it had been established that the Respondent received the K258, 000.00 as an agent of the Complainant to discharge the loan and purchase of a property. The question was whether the Respondent [Joseph Nombo Sianyabo] discharged his duties after receiving cash. The answer was No and it***

left the Complainant with loans. The Committee noted that the Respondent failed to account for the K258, 000.00 to the Complainant which ought to have been paid to the Vendor to facilitate as per statement of claim. The failure on the part of the Respondent amounts to misconduct under the Act and rules section 52/53 of the Act stated that an advocate who fails to account commits misconduct. The Committee accordingly resolved to suspend the practice certificate for the Respondent and referred the matter to the Disciplinary Committee for further determination.

4.15 In addition to the foregoing, and in general granted the circumstances of the case, and without prejudice to the anticipated arbitration proceedings, it is safe to say, there is no sufficient proof or cause to show that the Applicant has demonstrated a clear right to the relief sought. Above all, he has also not proved that if the stay is not granted, he will suffer irreparable harm.

4.16 The mere assertion that the Applicant has pending cases before the Constitutional Court and High Court wherein he is supposedly anticipated to discharge his advisory roles as a legal practitioner is insufficient to constitute real or anticipated irreparable harm, especially when the suspension is *prima facie* inspired by public policy to protect the nobility of the profession and the purity of the pending disciplinary proceedings. Therefore, the balance of justice tilts in favour of not granting the order sought. There is no basis to disturb the decision of the LPC.


5.0 CONCLUSION

5.1 In the light of the foregoing, there is no basis or merit to sustain the interim measure of protection. Accordingly, the *ex parte* order dated July 17, 2024 granting the Applicant a stay against the decision of the LPC suspending him from practising law is discharged. The application is dismissed.

5.2 I make no order as to costs.

5.3 Leave to appeal is granted.

DATED THE 27TH DAY OF MARCH, 2025



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THE HON. MR. JUSTICE CHARLES ZULU