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2012/HP/871

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

**IN THE MATTER OF:**

**SECTION 106 OF THE BANKING AND  
FINANCIAL SERVICES ACT**

AND

**IN THE MATTER OF:**

**ACCESS FINANCIAL SERVICES LIMITED AND  
ACCESS LEASING LIMITED**

AND

**IN THE MATTER OF:**

**THE IMPLEMENTATION OF THE LIQUIDATION  
SCHEDULE**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 5<sup>th</sup> DAY  
OF DECEMBER, 2025**

*For the Objectors/ Applicant : Ms N. Adams, Messrs D. Findlay & Associates*  
*For the Respondent : Mr C. Siamutwa, Mr D Kaira and Mr K. Kalimbwe,*  
*Messrs Charles Siamutwa Legal Practitioners*

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## **R U L I N G**

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CASES REFERRED TO:

1. *Miyanda v The High Court 1984 ZR 75*
2. *Prince Jefri Bolkiah v KMPG (A firm) 1999 1 ALL ER*
3. *Three Rivers District Council v the Bank of England (No 6) [2005] 1 AC 610*
4. *Kansanshi Mine Plc v Joseph Maini Munimina & others SCZ Appeal No 149/2010 (unreported)*
5. *Dipak Parmer and another v Radian Stores Limited and another 2015 Vol 1 ZR 228*
6. *African Banking Corporation Limited v Mubende Country Lodge Appeal No 116 of 2016*
7. *Kekelwa Samuel Kongwa v Kongwa SCZ No 85 of 2019*
8. *John Sangwa v Sunday Bwalya Nkonde Appeal No 2 of 2021*
9. *Chilele v Mabo and another Appeal No 88 of 2021*
10. *Ernest Sinyolo v The University of Zambia 2024/HP/1266*

LEGISLATION REFERRED TO:

1. ***The Rules of the Supreme Court of England, 1965, 1999 Edition***
2. ***The Legal Practitioners Practice Rules, Statutory Instrument No 51 of 2002***
3. ***The Banking and Financial Services Act No 7 of 2017***

OTHER WORKS REFERRED TO:

1. ***Conflict of Interest by Charles Hollander Q.C and Simon Salzedo***

**1. INTRODUCTION**

- 1.1 On 24<sup>th</sup> July, 2025, the Respondent, who is the Bank of Zambia filed a Notice of intention to raise preliminary issues, pursuant to ***Order 33 Rule 2 of the Rules of the Supreme Court of England, 1965, 1999 Edition.***
- 1.2 The question for determination in the Notice is:
  - i. *Counsel for the Applicant, D. Findlay and Associates should cease to act for the Applicant in this matter, as doing so, places the said D. Findlay and Associates in a position of conflict of interest based on the reasons stated in the affidavit filed in support hereof.*
- 1.3 The Notice was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.4 In opposing the Notice, the Objectors/Applicants filed an affidavit in opposition, together with a List of Authorities and Skeleton Arguments in opposition on 5<sup>th</sup> August, 2025.
- 1.5 An affidavit in reply and Skeleton Arguments in reply were filed on August, 2025.

## 2. SUBMISSIONS AT THE HEARING

### SUBMISSIONS BY COUNSEL FOR THE BANK OF ZAMBIA

- 2.1 In submitting, Counsel for the Bank of Zambia stated that they filed a Notice to raise preliminary issues pursuant to **Order 33 Rule 2 of the Rules of the Supreme Court of England, 1965, 1999 Edition** adding that the said provision of law empowers the Court to determine preliminary applications at any stage of the proceedings.
- 2.2 It was submitted that the Notice was supported by an affidavit which was deposed to by Kapaso Mumbi, and which was filed on 24<sup>th</sup> July, 2025. Further submission was made, that Skeleton Arguments were also filed in support of the application.
- 2.3 Counsel relied on the said documents, and augmented that D. Findlay & Partners, who represent the Objectors also represent a company called Genesis Finance (In Liquidation), which the Bank of Zambia placed in liquidation pursuant to **Section 127 of the Banking and Financial Services Act No 7 of 2017**.
- 2.4 It was stated that the liquidation was read together with **Section 128** which effectively substitutes the powers of the company with the Bank of Zambia. Further in submitting, Counsel stated that in terms of the said **Section 128**, the powers of the Bank of Zambia are so expansive, that they go beyond the powers of a Liquidator under the **Corporate Insolvency Act of 2017**, to the extent that the Bank of

Zambia becomes the management of a company that is in liquidation.

- 2.5 Counsel added that the Bank of Zambia effectively puts on the shoes of the company that is in liquidation.
- 2.6 It was also submitted that in the affidavit in reply, Kapaso Mumbi had exhibited documents as 'KM1' and the first document on that exhibit, was a letter that he wrote to D. Findlay and Associates as the legal representative of Genesis Financial Services (In liquidation), requesting their opinion for use by the Bank of Zambia, which was copied to the Bank of Zambia.
- 2.7 In still submitting, Counsel stated that there was another letter which was part of exhibit 'KM1' from D. Findlay and Associates complying with the request from the Liquidation Manager.
- 2.8 Therefore, Counsel submitted that D. Findlay and Associates are lawyers for Genesis Financial Services (In Liquidation) and are effectively representing the Bank of Zambia in the liquidation of Genesis Financial Services (In liquidation).
- 2.9 Counsel stated that for that reason, D. Findlay and Associates are in a position of real conflict of interest or an apparent conflict of interest. It was also his submission, that given the intimate interaction with the client, Kapaso Mumbi, D. Findlay and Associates could not appear or place themselves in a situation where they opposed, as in this case, the powers of the Bank of Zambia, who is their client by extension.

2.10 On that basis, Counsel prayed that D. Findlay and Associates be ordered to withdraw from acting on behalf of the objectors, with costs.

**RESPONSE BY COUNSEL FOR THE OBJECTORS,  
MESSRS D. FINDLAY AND ASSOCIATES**

2.11 It was Counsel's response, that they had filed an affidavit in opposition together with a List of Authorities and Skeleton Arguments in opposition on 5<sup>th</sup> August, 2025. Reliance was placed on the said documents, and Counsel further submitted that the application was improperly before Court, having been brought pursuant to ***Order 33 Rule 2 of the Rules of the Supreme Court of England.***

2.12 It was also submitted that contrary to Counsel for the Bank of Zambia's contention, that provision of the law did not allow the Court to be moved by way of preliminary issue as the said provision related to modes of trial. Thus, the provision could not be relied on, in making the application.

2.13 Counsel stated that they had, in the skeleton arguments addressed that position, and she went on to state that the Supreme Court had guided that where an application had been made pursuant to a wrong provision of the law, it was irregular and could not be entertained by the Court.

2.14 In further submission, Counsel stated that the Court in the case of ***Miyanda v The High Court*** <sup>(1)</sup> guided that the jurisdiction of the Court does not only relate to matters that have been brought before the Court, but also in the manner that they are brought for the Court's determination.

- 2.15 It was Counsel's submission, that as a wrong mode of bringing the application had been brought, the application was incompetently before the Court, and it ought to be dismissed.
- 2.16 The further submission was however, that should the Court find that the application was properly before it, then it was D. Findlay & Partners' position, that it had not been engaged to act for the Bank of Zambia. Therefore, no legal client relationship arose between them.
- 2.17 Counsel stated that it was noteworthy that D. Findlay & Partners acted for Genesis Finance Limited (In Liquidation) and not for the Bank of Zambia.
- 2.18 Addition was made, that in any event, the Bank of Zambia had not demonstrated by way of affidavit evidence or otherwise, what conflict of interest was likely to arise between Genesis Finance Limited (In Liquidation) and the matter before Court which involved two entirely distinct entities.
- 2.19 As regards the letter which was among those that were exhibited as 'KM1' to the affidavit in reply, Counsel's submission was that it had been stated that D. Findlay & Partners were asked their opinion on behalf of the Bank of Zambia, and it complied with the request from the Liquidation Manager.
- 2.20 Counsel asked the Court to note that contrary to Counsel for the Bank of Zambia's submission, the letter was a request for a list of cases that D. Findlay & Partners was handling

and not for an opinion. It was added that D. Findlay & Partners responded by providing a List of cases that it was handling, and that the letter was specifically addressed to Genesis Finance Limited (In Liquidation) and not the Bank of Zambia.

2.21 Therefore, Counsel took the view that the application was misconceived and should be dismissed with costs.

**REPLY BY COUNSEL FOR THE BANK OF ZAMBIA**

2.22 The submission in reply was that exhibit 'KM1' to the affidavit in reply stated that D. Findlay & Partners was being asked to provide a comprehensive list of cases that it was handling by the Bank of Zambia.

2.23 Counsel added that the opening of that letter, stated that the Bank of Zambia was carrying out an audit of all cases that were being handled by external Counsel on behalf of the Bank of Zambia.

2.24 Further submission was made, that the penultimate paragraph requested for an indication of likelihood of recovery, which was a clear request for an opinion.

2.25 **Section 128 of the Banking and Financial Services Act** was relied on, with regard to the contention that D. Findlay & Partners had acted for the Bank of Zambia. Counsel noted that Counsel from D. Findlay & Partners had not addressed that provision of the law, entailing that they agreed with it.

2.26 On the submissions relating to **Order 33 Rule 2 of the Rules of the Supreme Court of England**, Counsel's reply was that the Court has very expansive discretion and

jurisdiction under that Order, as it may order the trial of any question or issue arising in the matter.

2.27 The case of ***African Banking Corporation Limited v Mubende Country Lodge*** <sup>(6)</sup> was submitted as having gone to great lengths to reiterate the Court's expansive powers under ***Order 33 Rule 2 of the Rules of the Supreme Court of England***.

2.28 It was stated that the Court of Appeal in the case of ***Chilele and Mabo & another*** <sup>(9)</sup> adopted the Supreme Court's position in the ***African Banking Corporation Limited v Mubende Country Lodge*** <sup>(6)</sup> case.

2.29 Counsel reiterated that the application be granted and that D. Findlay & Partners be ordered to pay costs as Counsel had raised the issue with them and they had confirmed that Counsel met them to discuss the same.

### **3. DECISION OF THIS COURT**

3.1 I have considered the Notice of Motion. It was raised pursuant to ***Order 33 Rule 2 of the Rules of the Supreme Court of England, 1965, 1999 Edition***, which provides that:

***“Subject to the provisions of these rules, a cause or matter, or any question or issue arising therein, may be tried before -***

***(a) a Judge alone, or***

***(b) a Judge with a jury, or***

***(c) a Judge with the assistance of assessors, or***

- (d) an Official Referee with or without the assistance of assessors, or**  
**(e) a Master, or**  
**(f) a Special Referee.”**

3.2 Before I deal with the merits of the Notice of Motion, I will address the issue of whether the application was properly brought pursuant to **Order 33 Rule 2 of the Rules of the Supreme Court of England**. If I find that it was, I will deal with the merits of the application.

**WHETHER THE NOTICE OF MOTION WAS PROPERLY RAISED PURSUANT TO ORDER 33 RULE 2 OF THE RULES OF THE SUPREME COURT OF ENGLAND?**

- 3.3 In opposing the application, Dessislava Findlay, a Managing Partner in the firm, D. Findlay & Partners Legal Practitioners stated that she has conduct on behalf of the Applicants/Objectors to the Implementation of the Liquidation Schedule.
- 3.4 In the List of Authorities and Skeleton Arguments in opposition, it was argued that **Order 33 Rule 2 of the Rules of the Supreme Court of England** could not be invoked in raising the Notice of Motion.
- 3.5 Reliance was placed on the cases of **Kansanshi Mine Plc v Joseph Maini Munimina & others** <sup>(4)</sup> and **Kekelwa Samuel Kongwa v Kongwa** <sup>(6)</sup>.
- 3.6 In reply, the Bank of Zambia stated that the Court in the case of **African Banking Corporation Limited v Mubende Country Lodge** <sup>(6)</sup> held that the Court has wide discretion

under **Order 33 Rule 2 of the Rules of the Supreme Court of England**, to determine any preliminary issues at any stage of the proceedings.

- 3.7 The editorial notes in **Order 33/2/1 of the Rules of the Supreme Court of England**, explain the effect of the rule as:

**“This rule conveniently tabulates the different modes of trial in the High Court.”**

- 3.8 The Court of Appeal in the case of **Chilele v Mabo and another** <sup>(9)</sup> referred to the decision in the case of **African Banking Corporation v Mubende Country Lodge** <sup>(6)</sup>, in which the Supreme Court held that:

**“As regards the Appellant’s reliance on Order 33 RSC, the Supreme Court in the Mubende case stated as follows: “The import of Order 33, rule 3 RSC is that a preliminary point of law can be raised at any stage of the proceedings, including the period before trial. To that extent, we agree with the appellant that the parties need not wait for setting down the matter for trial before an application to determine a preliminary point of law can be raised. We should quickly make the point however, that Order 33 rule 3 cannot be invoked independently or to the exclusion of the mandatory requirements of Order 14A RSC, which require the filing of a notice of intention to defend as a pre-requisite to raising a preliminary point of**

***law. We stated earlier in this judgment that in the context of our rules, a notice of intention to defend is the filing of a memorandum of appearance with a defence...”***

- 3.9 It is clear from the above holding, that the Court guided that the provisions of ***Order 33 Rule 3 of the Rules of the Supreme Court of England***, can only be invoked where an applicant has satisfied the requirements under ***Order 14A of the Rules of the Supreme Court*** by entering appearance and filing a defence.
- 3.10 Therefore, in order to invoke the provisions under ***Order 14A and Order 33 Rule 3 of the Rules of the Supreme Court of England***, that is only possible where the matter is commenced by Writ of Summons, as a defence would have to be entered before an application under that Order is made.
- 3.11 It is however noteworthy, that in the case of ***John Sangwa v Sunday Bwalya Nkonde*** <sup>(8)</sup> where the matter was commenced by way of petition, and a question was raised whether issues could be raised under ***Order 14A of the Rules of the Supreme Court of England***, in such a matter, that the Supreme Court stated the following:

***“What the Appellant was asking for in some of the grounds launched was for the Court of Appeal to state whether or not the High Court misdirected itself when it found the Judges preliminary issue launched pursuant to Orders 14A and 33 of the White Book as being on firm ground.***

*He was inspired to raise this ground if the Court ruled in his favour, his petition in the High Court would have proceeded, save of course for the amendment of the parties. By declining to hear that portion of his appeal, the Appellant was denied the opportunity of knowing the fate of his petition.*

*We are also of the view that the issues raised in relation to the application of the White Book in petitions under the Bill of Rights could have been determined by that Court, as we will demonstrate without straying into the merits of the provisions of the Bill of Rights and that it ought to have determined the issues.....*

*The short answer to the issues raised by the Appellant in relation to the first question at 45.1 is in The Protection of Fundamental Rights Rules, 1969 and the editorial introduction to Order 33 of the White Book which is Order 33 rule 0 subrule 2. In respect of the former, there is no provision whatsoever which provides for the raising of interlocutory objections before the hearing of a petition neither do they prohibit the raising of a preliminary objection.*

*Coming to the White Book, Order 33 rule 0 subrule c states that it is only in matters begun by writ in which a Judge may order the determination of*

*different issues to be made at different times. This is reinforced by Order 33 rule 4 subrule 2 of the white book. Order 33 Rule 3 itself talks about a question or issue arising out of the pleadings as confirmed by Order 33 rule 4. In addition, Order 18 rule 0 and subrule 2 specifically states that "pleadings do not include a petition."*

*The introduction states further that it is only in exceptional cases and with necessary modifications that such procedure can be invoked in matters began by originating summons.*

*To the extent stated in the preceding paragraphs it was a misdirection on the part of the High Court to consider the preliminary objection premised on Order 33 of the White Book because the matter before it was commenced by petition. The misdirection is reinforced by the fact that even assuming that the matter was commenced by Writ of Summons, the fact that no defence was lodged by the Judge by the time the preliminary objection was raised, the High Court could not consider it under that Order and invoke the power to dismiss contained in Order 14A of the white book.*

*In the not too distant past we stated in the case of African Banking Corporation Limited v Mubende Country Lodge Limited that an application under*

*Order 14A of the white book can only be made after the defence has been filed.*

*On the facts of this case which show that the action was commenced by petition under Article 28, a preliminary issue raised under Order 14A as read with Order 33 rule 7 of the white book and there being no opposition filed by the Judge.*

*It was a misdirection on the part of the High Court when it found that the preliminary issue was on firm ground and the preliminary objection to be on firm ground and the Court of Appeal when it refused to consider the propriety of the preliminary objection.*

*The decision we have reached in the preceding paragraph is by no means a suggestion that in any obviously deserving cases the High Court is barred from entertaining a preliminary objection on the ground that the relevant rules are silent on the issue.*

*In the case of Finsbury Investments Limited v Manuel Ventriglia which was one of the appeals arising from the dispute which was before the Judge, we held that the High Court was on firm ground when it entertained a preliminary objection in a matter involving a winding up petition despite the rules being silent.*

***We justified such action on the inherent jurisdiction of that Court under the High Court Act which is not in conflict with the Constitution to grant all remedies and reliefs as the justice of a case deserves.***

***Similarly, in matters involving petitions under the Bill of Rights, we do not see why a Judge cannot entertain a preliminary objection....”***

- 3.12 In this matter, the proceedings were commenced by Originating Summons pursuant to the ***Banking and Financial Services Act Chapter 387 of the Laws of Zambia*** in relation to matters that arose during the liquidation of Access Financial Services Limited and Access Leasing Limited.
- 3.13 Clearly the proceedings were not commenced by Writ of Summons, but going by the decision of the Supreme Court in the ***John Sangwa v Sunday Bwalya Nkonde*** <sup>(8)</sup> case, which has been seen above, a Court cannot proceed to hearing preliminary objections under ***Order 14A and 33 of the Rules of the Supreme court of England*** where a matter is not commenced by Writ of Summons.
- 3.14 However, it will be noted that the Supreme Court in that matter, further held that there is nothing that precludes a Court from considering a preliminary objection in matters commenced by Originating Summons where no procedure is provided.

3.15 In this matter, there is no procedure that is provided under the ***Banking and Financial Services Act*** relating to the raising of preliminary objections.

3.16 As such, the application was properly raised under ***Order 33 Rule 2 of the Rules of the Supreme Court of England***, and I will proceed to consider it.

**WHETHER D. FINDLAY & PARTNERS SHOULD CEASE TO ACT FOR ACCESS FINANCIAL SERVICES LIMITED AND ACCESS LEASING LIMITED?**

3.17 The affidavit as deposed to by Kapaso Mumbi, was that D. Findlay and Associates who represent Genesis Finance Limited (In Liquidation) which is subject of litigation by the Bank of Zambia, involving implementation of a liquidation schedule pursuant to the ***Banking and Financial Services Act***.

3.18 He stated that that by virtue of being under liquidation by the Bank of Zambia, Genesis Finance Limited (In Liquidation) is under the sole control and management of the Bank of Zambia. Therefore D. Findlay and Associates are essentially representing the Bank of Zambia.

3.19 Kapaso Mumbi further deposed that by virtue of his unguarded interaction with D. Findlay and Associates, he may have in good faith disclosed a number of matters to them as their legal representatives, which are subject to attorney client privilege.

3.20 It was also his averment, that D. Findlay and Associates had applied to have him examined on oath in this matter, and he

was concerned that D. Findlay and Associates may use some information that he may have disclosed to them, as they examine him on oath.

- 3.21 In opposition, Dessislava Findlay a Managing Partner of D. Findlay & Partners who has conduct of the matter on behalf of the Objectors/Applicants to the implementation of the Liquidation Schedule, Mr Faustin Mwenya and Aaron Chungu, noted that Kapaso Mumbi who had deposed to the affidavit which was filed in support of the Notice is the Liquidation Manager for Access Financial Services Limited and Access Leasing Limited, with authority to depose to the said affidavit on behalf of the Bank of Zambia.
- 3.22 Further averment was made, that Kapaso Mumbi had alleged that D. Findlay & Partners are essentially representing the Bank of Zambia having acted for Genesis Finance Limited (in liquidation).
- 3.23 Dessislava Findlay deposed that D. Findlay & Partners do not represent that Bank of Zambia in any current, pending or previously determined Court matters, neither has it ever been engaged to act for and on behalf of the Bank of Zambia.
- 3.24 Thus, D. Findlay & Partners does not have any legal client relationship with the Bank of Zambia, and has never contemplated any instruction from the Bank of Zambia to either act for and on behalf of the Bank of Zambia.
- 3.25 In still deposing, Dessislava Findlay stated that she verily believed that neither the Bank of Zambia nor any of its' employees have engaged D. Findlay & Partners to render any

legal services for and on behalf of the Bank of Zambia, and that D. Findlay & Partners have not received any confidential and/or privileged communication from the Bank of Zambia or any of its' employees that is subject to legal professional privilege.

- 3.26 Her averment was that, she is aware that D. Findlay & Partners was engaged to act for and on behalf of Genesis Finance Limited (In liquidation) by the Liquidation Manager who is from Bank of Zambia, and D. Findlay & Partners continues to represent and act solely for Genesis Finance Limited (In Liquidation), and not the Bank of Zambia, as the two are distinct and separate entities, and remain distinct and separate entities.
- 3.27 Thus, she deposed that D. Findlay & Partners have never had any instructions to represent and/or act for and on behalf of Bank of Zambia, and as such it does not represent the Bank of Zambia in any Court matters.
- 3.28 Dessislava Findlay stated that Genesis Finance Limited (In Liquidation) is a distinct and separate entity from the Bank of Zambia, even though the Liquidation Manager is from the Bank of Zambia.
- 3.29 Thus D. Findlay & Partners has no mandate from the Bank of Zambia to represent it in any matters before the Courts of law. She added that any matters that D. Findlay & Partners are representing Genesis Finance Limited (In Liquidation) in the Courts, are on instructions that D. Findlay & Partners

have solely to act from Genesis Finance Limited (In Liquidation).

- 3.30 It was also deposed that any instructions that D. Findlay & Partners have from the Liquidation Manager of Genesis Finance Limited (In Liquidation) are limited to and relate solely to matters in respect of Genesis Finance Limited (In Liquidation) and not the Bank of Zambia as an entity.
- 3.31 Dessislava Findlay stated that Kapaso Mumbi in deposing to the affidavit, had not stated in what capacity he was acting when he allegedly disclosed information to D. Findlay & Partners, that is whether it was in his capacity as Liquidator for Access Financial Services Limited and Access Leasing Limited, whether as an employee of the Bank of Zambia, or as Liquidation Manager for Genesis Finance Limited (In Liquidation).
- 3.32 Her averment was that, she is aware that no litigation privilege or legal advice privilege applies between D. Findlay & Partners and the Bank of Zambia as well as Access Financial Services Limited (In Liquidation) and Access Leasing Limited (In Liquidation) from casual conversations or communication where there is no legal context with intent to instruct Counsel.
- 3.33 Dessislava Findlay also deposed that the averment that Kapaso Mumbi had made, that he had disclosed communication which may be privileged when he interacted with D. Findlay & Partners in the matter involving Genesis Finance Limited (In Liquidation), did not raise professional

privilege between D. Findlay & Partners, and the Bank of Zambia and/or for Access Financial Services Limited (In Liquidation) and Access Leasing Limited (In Liquidation) nor did they propose to impose any duty of care on D. Findlay & Partners, as no legal relationship between any of those entities and D. Findlay & Partners exists.

- 3.34 It was also her averment, that Kapaso Mumbi had no legal capacity to instruct D. Findlay & Partners for and on behalf of the Bank of Zambia or to bind the Bank of Zambia to a legal contract of service with D. Findlay & Partners as Kapaso Mumbi had not stated that he had such capacity, and he had not exhibited the existence of such authority for and on behalf of the Bank of Zambia.
- 3.35 Dessislava Findlay stated that Kapaso Mumbi was not in a position to communicate any information that would fall within the legal professional privilege category in relation to the Bank of Zambia.
- 3.36 The arguments as advanced in the List of Authorities and Skeleton Arguments in opposition were that D. Findlay & Partners had not been retained by either the Bank of Zambia or the Liquidator of Access Financial Services Limited and Access Leasing Limited. It was stated that what was being alleged was that by virtue of having acted for another entity in liquidation, whose Liquidator is from the Bank of Zambia, there was conflict of interest.
- 3.37 The contention was that however, the Bank of Zambia had not disclosed what confidential information if any, was

passed from Kapaso Mumbi in his duty as Liquidator for Genesis Finance Limited (In Liquidation) that could possibly impact these proceedings which relate to a totally different entity, distinct and separate from the Liquidator.

- 3.38 Reference was made to the case of ***Dipak Parmer and another v Radian Stores Limited and another*** <sup>(5)</sup>, stating that in that matter, the Supreme Court stated that it is protection in confidence that is fundamental, rather than the mere fact that a Practitioner is representing interests adverse to his/her former client.
- 3.39 It was also noted that the Supreme Court in that matter, further observed that there must be an indication that there is real risk of disclosure of information obtained in confidence, not fanciful and illusionary risk as it appeared.
- 3.40 Also relied on, in support of the position that the Supreme Court took was ***Conflict of Interest by Charles Hollander Q.C and Simon Salzedo***, where the authors specify that it is not enough for the risk to be theoretical or illusionary, it must be real.
- 3.41 The argument was that in this matter, no real risk had been demonstrated, as it had not been established for certain that:
- (i) The Liquidator of a non-related entity would disclose confidential information to D. Findlay & Partners in a matter where they represent a non-related entity, and if so

(ii) that D. Findlay & Partners have any duty to the Bank of Zambia or the Liquidator of Access Finance Limited and Access Leasing Limited to keep confidential any such information that is disclosed casually where they have not been retained.

- 3.42 Relying on the case of ***Prince Jefri Bolkiah v KMPG (A firm)*** (2) the argument was that, where there is no real danger of disclosure of information or misuse of confidential information, the Court will not grant the relief.
- 3.43 It was stated that while Access Financial Services Limited and Access Leasing Limited were aware that each case is judged on its' merits, their argument was that the confidential information that was alleged to have been disclosed to D. Findlay & Partners had not been stated, and if so, whether there was any legal professional relationship that was created at the time of such disclosure, and between which parties such legal professional relation was created.
- 3.44 The argument was that it was not just enough to simply state as per paragraph 5 of the affidavit which had been filed in support of the Notice that the deponent may have in good faith disclosed a number of matters.
- 3.45 Further in arguing, it was also stated that it was simply not enough to state that a Legal Practitioner had been instructed in an unrelated capacity and unrelated matter to seek cover under legal professional privilege, in an unrelated matter.

- 3.46 It was stated that a lawyer client relationship is established in a matter where a lawyer is instructed, and only where a client relationship is established, and that it does not operate universally on any or all matters, but specifically for the matter where the lawyer is engaged.
- 3.47 The case of ***Three Rivers District Council v the Bank of England*** <sup>(3)</sup> was argued as where the Court of Appeal, emphasized that the communication that is privileged must be for the purpose of seeking legal advice, and must state that it is for the purpose of seeking legal advice, otherwise it will not be covered under legal professional privilege.
- 3.48 In the affidavit in reply, Kapaso Mumbi deposed that he is the Liquidation Manager of Access Financial Services Limited and Access Leasing Limited, having been appointed by his employer, Bank of Zambia.
- 3.49 He exhibited as 'KM1' collectively, correspondence between himself and D. Findlay and Associates in which he was written to in his capacity as Liquidation Manager who was appointed by the Bank of Zambia.
- 3.50 He further averred that the correspondence was copied to the Bank of Zambia for reporting purposes as the Bank of Zambia is the ultimate client and Liquidator of Genesis Finance Limited.
- 3.51 Kapaso Mumbi stated that the Bank of Zambia is managing Genesis Finance Limited (In Liquidation).
- 3.52 The Skeleton Arguments in reply stated that case of ***Ernest Singolo v The University of Zambia*** <sup>(9)</sup> defined conflict of

interest as a situation which is likely to affect the Judgment of the lawyer/legal practitioner, as it relates to his/her loyalty to a client, prospective client or former client.

- 3.53 Further argument was made that **Rule 32 (3) of the Legal Practitioners Practice Rules S I. No 51 of 2002** states that a Practitioner shall act towards a client at all times in good faith.
- 3.54 The provisions of **Rule 33 (1) (f) of the Legal Practitioners' Practice Rules of 2002** were also cited. The argument was that the said provision of the law prohibits a Practitioner from accepting any brief, if there appears to be some conflict or significant risk of some conflict either between the interest of a Practitioner or of any partner or associate of the Practitioner, and some other person or between the interest of any one or more of their clients.
- 3.55 It was contended that D. Findlay & Partners are conflicted in this matter due to the dual role that they are playing in representing Genesis Finance Limited (In Liquidation) and opposing the implementation of the Access Financial Servied Limited and Access Leasing Limited Liquidation Schedule.
- 3.56 Reliance was placed on **Rule 33 (1) (g) of the Legal Practitioners' Practice Rules** stating that it proscribes a Legal Practitioner from taking instructions from a client where it appears that there is conflict of interest or potential of it.

- 3.57 Further argument was made, that where there is apparent breach of confidentiality, a Legal Practitioner should avoid taking instructions.
- 3.58 It was submitted that the only way to cure conflict of interest is by recusal of the Practitioner from acting for the client.
- 3.59 In this matter, the affidavit evidence shows that it has been conceded that the Bank of Zambia is the Liquidator for Genesis Finance Limited (In Liquidation) and Access Finance Limited (In Liquidation) and Access Leasing Limited (In Liquidation).
- 3.60 Further agreement has been made that the Liquidation Manager for the said entities is Kapaso Mumbi who is an employee of the Bank of Zambia.
- 3.61 D. Findlay & Partners has admitted that it acts for Genesis Finance Limited (In Liquidation), and that it so acts on account of Kapaso Mumbi, the Liquidation Manager of the Bank of Zambia.
- 3.62 D. Findlay & Partners' contention was that it only acts for Genesis Finance Limited (In Liquidation) on behalf of the Liquidation Manager, and not in other distinct and unrelated matters, such as the one before Court.
- 3.63 Further contention was made, that the nature of such any information that Kapaso Mumbi may have given to D. Findlay & Partners in their interactions in the Genesis Finance Limited (In Liquidation) case, had been stated which could give rise to conflict of interest in this matter.

- 3.64 In response, the Bank of Zambia stated that it is the Liquidator for Genesis Finance Limited (In Liquidation). Therefore, as it requested D. Findlay & Partners to give its' opinion, on matters involving Genesis Finance Limited (In Liquidation), D. Findlay & Partners was and is acting on behalf of the Bank of Zambia.
- 3.65 The exhibit 'KM1' to the affidavit in reply was relied on as evidencing the correspondence between Kapaso Mumbi and D. Findlay & Partners.
- 3.66 Consequently, the contention was that D. Findlay & Partners is conflicted. Reliance was placed on the provisions of **Section 128 of the Banking and Financial Services Act No 7 of 2017**, as providing that the Bank of Zambia on taking over a company that is in liquidation acts on behalf of such a company.
- 3.67 As such, as the Bank of Zambia took over Genesis Finance Limited (In Liquidation), and it requested D. Findlay & Partners to provide an opinion on Genesis Finance Limited (In Liquidation), D. Findlay & Partners acted on behalf of the Bank of Zambia.
- 3.68 D. Findlay & Partners denied that it has ever been instructed by the Bank of Zambia. Therefore, the two do not enjoy a legal client relationship.
- 3.69 **Section 128 of the Banking and Financial Services Act No 7 of 2017** is as follows in provision:
- "128. (1) In effecting a compulsory winding-up or dissolution of the financial service provider, in**

**accordance with this Act the Bank may, in addition to any other powers, exercise the powers of the financial service provider concerned.**

**(2) Without limiting the generality of subsection (1), the Bank as liquidator of a financial service provider shall have the power to—**

**(a) bring, carry on or defend an action or legal proceedings in the name and on behalf of the financial service provider; and**

**(b) carry on the business of the financial service provider only for the beneficial winding-up or dissolution of the financial service provider.**

**(c) uncollected funds, payable to a depositor or creditor, have been turned over to the Bank to be dealt with as unclaimed funds in accordance with this Act.**

3.70 A perusal of the correspondence which is exhibited as 'KM1' to the affidavit in reply, shows that Kapaso Mumbi in his capacity as Liquidation Manager for Genesis Finance Limited (In Liquidation) on 3<sup>rd</sup> May, 2022 wrote to D. Findlay Associates requesting to know how the number of cases that it was handling as external Counsel.

3.71 In the last paragraph of the letter, D. Findlay was asked to indicate the likelihood of recovery for the debt collection matters.

- 3.72 In response, by the letter dated 18<sup>th</sup> July, 2023, D. Findlay and Associates responded giving the number of cases that it was handling on behalf of Genesis Finance Limited (In Liquidation as Plaintiff. It also gave opinions on the prospects of those cases.
- 3.73 From the above, it can be seen that D. Findlay & Partners is handling a number of cases as Counsel for Genesis Finance Limited (In Liquidation). Being a Company that is in liquidation, Genesis Finance Limited has been taken over by the Bank of Zambia in line with the provisions of **Section 128 of the Banking and Financial Services Act No 7 of 2017**.
- 3.74 That effectively means that the Bank of Zambia is a client for D. Findlay & Partners, as far as the cases relating to Genesis Finance Limited in Liquidation.
- 3.75 **Rule 33 of the Legal Practitioners' Practice Rules Statutory Instrument No 51 of 2002** states that:
- “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:***
- (a).....***
- (f) there is or appears to be some conflict or significant risk of some conflict either between the interest of the practitioner, or of 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 confidences 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.”**

- 3.76 The Bank of Zambia being a client of D. Findlay & Partners in the cases involving Genesis Finance Limited (In Liquidation), by D. Findlay & Partners acting for the Objectors Access Financial Services Limited and Access Leasing Limited in this matter, that brings the provisions of **Rule 33 (f) and (g) of the Legal Practitioners Practice Rules of 2002** into play, as D. Findlay & Partners having requested to cross examine Kapaso Mumbi, the Liquidation Manager of Genesis Finance Limited (In Liquidation) and who is an employee of the Bank of Zambia, this will be to effectively cross examine their own client.
- 3.77 In as much the matters involving Genesis Finance Limited (In Liquidation) have nothing to do with the liquidation of Access Financial Services Limited and Access Leasing Limited which is before this Court, Kapaso Mumbi as Liquidation Manager for Genesis Finance Limited (In Liquidation), is a client of D. Findlay & Partners, and cross examining him is likely to raise conflict of interest as this a

client who has instructed them in the liquidation of Genesis Finance Limited (In Liquidation).

#### **4. CONCLUSION**

- 4.1 As such, while there is no real risk that cross examining Kapaso Mumbi in this matter, may result in Kapaso Mumbi divulging confidential information in relation to the matters, involving Genesis Finance Limited (In Liquidation), and also in view of the fact that Kapaso Mumbi did not disclose what information is likely to be disclosed which is confidential, the propriety of such cross examination however is a matter of concern, as D. Findlay & Partners would be cross examining a client of theirs in other matters.
- 4.2 **Rule 32 of the Legal Practitioners Practice Rules** provides that:

***“32. (1) A practitioner shall not-***

***(a) engage in conduct whether in pursuit of the profession or otherwise which is:***

***(i) dishonest or otherwise discreditable to a practitioner;***

***(ii) prejudicial to the administration of justice; or***

***(iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute; or.....”***

- 4.3 In view of the above, and the fact that cross examining ones' client raises ethical issues which in turn revolves on conflict of interest, in order to preserve the integrity of the legal profession, the Bank of Zambia being a client of D. Findlay & Partners, D. Findlay & Partners shall forthwith cease to represent the Objectors, Access Financial Services Limited and Access Leasing Limited in this matter.
- 4.4 The matter shall come up on 20<sup>th</sup> February, 2026 at 09:00 hours for the hearing of the objection to the implementation of the Liquidation Schedule.
- 4.5 Costs shall be in the cause and leave to appeal is granted.

**DATED AT LUSAKA THE 5<sup>th</sup> DAY OF DECEMBER, 2025**



S. Kaunda  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**